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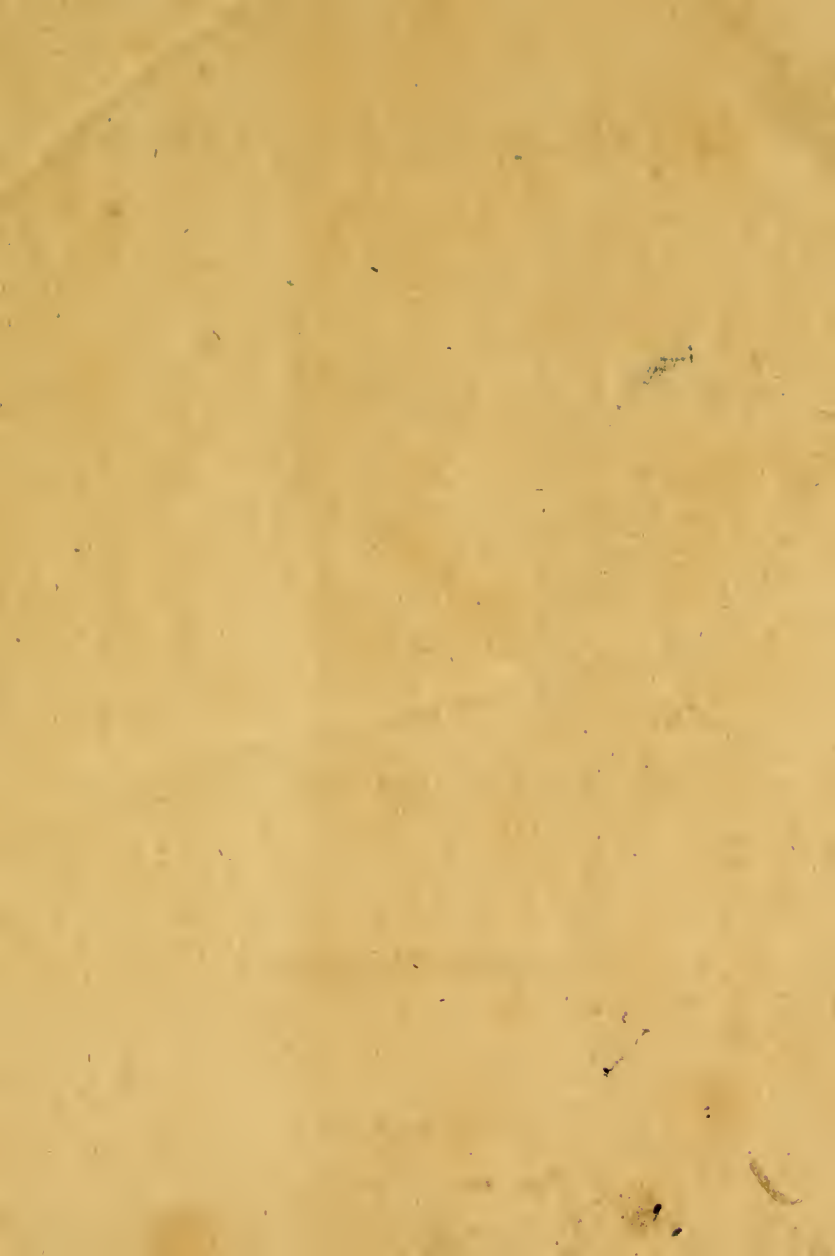
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CHARTER

HOUSE OF REPRESENTATIVES

WILL

AND EXHIBITS

FOR THE YEAR 1880

WASHINGTON

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1880

# DEBATES

IN THE

U.S.  
HOUSE OF REPRESENTATIVES,

ON THE

## BILLS

FOR CARRYING INTO EFFECT

THE

### *LOUISIANA TREATY.*

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1804.

DEBATES

For  
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HOUSE OF REPRESENTATIVES

OF THE

BILLS

THE CARRYING INTO EFFECT

LOUISIANA TREATY

# DEBATES, &c.

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## REPORT

*Of the committee to whom was referred, on the 12th ult. a motion for an appropriation of two millions of dollars, in addition to the sum usually appropriated, in relation to the intercourse between the United States and foreign nations.*

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IN THE HOUSE OF REPRESENTATIVES OF THE  
UNITED STATES, . .

WEDNESDAY, THE 12th OF JANUARY, 1803.

ORDERED,

THAT the committee of the whole house, to whom was yesterday committed a motion in the words following, viz.

“ *Resolved*, That a sum of two millions of dollars, in addition to the provision heretofore made, be appropriated to defray any expences which may be incurred in relation to the intercourse between the United States and foreign nations, to be paid out of any money that may be in the treasury, not otherwise appropriated, and to be applied under the direction of the president of the United States, who, if necessary, is hereby authorized to borrow the whole or any part thereof; an account whereof, as soon as may be, shall be laid before con-

gress," be discharged from the consideration thereof; and that the said motion be referred to Mr. Nicholson, Mr. Eustis, Mr. Bayard, Mr. Dickson, Mr. Lowndes, Mr. Thomson, and Mr. Gregg; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the house.

## REPORT.

*The committee, to whom was referred a resolution proposing an appropriation of two millions of dollars, in addition to the sum usually appropriated, for the purposes of intercourse between the United States and foreign nations, submit the following report.*

THE object of this resolution is to enable the executive to commence, with more effect, a negotiation with the French and Spanish governments relative to the purchase from them of the island of New-Orleans, and the provinces of East and West Florida. The object is deemed highly important, and has received the attentive consideration of the committee. The free and unmolested navigation of the river Mississippi, is a point to which the attention of the general government has been directed ever since the peace of 1783, by which our independence as a nation was finally acknowledged. The immense tract of country owned by the United States, which lies immediately on the Mississippi, or communicates with it by means of large navigable rivers rising within our own boundaries, renders its free navigation an object, not only of inestimable advantage, but of the very first necessity. The Mississippi forms the western boundary of the United States, from its source to the 31st degree of north latitude, and empties itself into the Gulf of Mexico about the 29th degree of north latitude. It furnishes the only outlet through which the produce of the Indiana territory, of the states of Ohio, Kentucky, and Tennessee, and of the western parts of Pennsylvania and Virginia, and a portion of the Mississippi territory, can be transported to a foreign market, or to the ports of

the Atlantic states. From the 31st degree of north latitude, which is the southern boundary of the United States, to the mouth of the river, the territory on each side has heretofore been in possession of the Spanish government; the province of Louisiana lying to the west, and those of East and West Floridas, with the island of New-Orleans, to the east. Although the United States have always insisted on an uncontrollable right to pass up and down the river, from its source to the sea, yet this right, if admitted in its most ample latitude, will not secure to them the full advantages of navigation. The strength and rapidity of the current of the Mississippi are known to render its ascent so extremely difficult, that few vessels of burden have attempted to go so far up as our southern boundary. This circumstance obliges the citizens of the western country to carry their produce down the river in boats, from which it is put on board of ships capable of sustaining a sea voyage. It follows, therefore, that to enjoy the full benefits of navigation, some place should be fixed which sea vessels can approach without great inconvenience, where the American produce may be deposited until it is again shipped to be carried abroad. This great point was secured to us in the year 1795, by the Spanish government, who agreed, in the treaty of San Lorenzo el Real, that the Americans should have the right of deposit at New-Orleans. This right has been used from that time till a late period; but the conduct of the intendant at that place shows how liable the advantageous navigation of the river is to interruption, and strongly points out the impolicy of relying on a foreign nation for benefits which our citizens have a right to expect should be secured to them by their own government. It is hoped that the port of New-Orleans may again be opened, before any very material injuries arise; but should this be the case, or if, as the treaty provides, a new place of deposit should be assigned, the late occurrence shows the uncertainty of its continuance. Experience proves, that the caprice or the interested views of a single officer, may perpetually subject us to the alternative of submitting to injury, or of resorting to war,

The late violation of our treaty with Spain, necessarily leads to the enquiry how far the western country may be affected in other points, not connected with New-Orleans. The Mississippi territory extends from the confines of Georgia to the river Mississippi, and from the 31st to the 35th degree of north latitude. It is estimated to contain more than fifty millions of acres, and from its numerous advantages, must one day or other possess an immense population. The variety, richness, and abundance of its productions, hold out to settlers the strongest inducements to resort thither, and the United States may safely calculate on drawing a considerable revenue from the sale of the lands in this, as well as in other quarters of the western country. The value of these, however, may be diminished or increased, and the sale impeded or advanced by the impression made on the public mind by shutting the port of New-Orleans, and by the eventual measures which may be adopted to guard against similar injuries.

West Florida is bounded on the north by the Mississippi territory, from which it is separated by no natural boundary; on the east by the river Apalachicola, which divides it from East Florida; on the west, by the river Mississippi; and on the south, by the Gulf of Mexico. The Mississippi territory is intersected by many large and valuable rivers, which rise within its own boundaries, and meander through it in a general direction from north to south, but empty themselves into the Gulf of Mexico through the province of West Florida. In fact, with the exception of that part of the territory which lies immediately on the Mississippi, the whole must depend on the Mobile and the Apalachicola, with their numerous branches, and on some other rivers of inferior note, for the means of sending its products to market, and of returning to itself such foreign supplies, as the necessities or convenience of its inhabitants may require. In these rivers, too, the eastern parts of the state of Tennessee are deeply interested; as some of the great branches of the Mobile approach very near to some of those branches of the Tennessee river, which lie above the great Muscle shoals. Even if it should prove diffi-

cult to connect them, yet the land carriage will be shorter, and the rout to the sea more direct, than the river Tennessee furnishes. These rivers possess likewise an advantage which is denied to the Mississippi. As their sources are not in the mountains, and their course is through a level country, their currents are gentle, and the tide flows considerably above our boundary. This circumstance, together with the depth of water which many of them afford, render them accessible to sea vessels; and ships of two hundred tons burden, may ascend several hundred miles, into the heart of the Mississippi territory. These rivers, however, which run almost exclusively within our own limits, and which it would seem as if nature had intended for our own benefit, we must be indebted to others for the beneficial use of, so long as the province of West Florida shall continue in the possession of a foreign nation. If the province of West Florida were of itself an independent empire, it would be the interest of its government to promote the freedom of trade, by laying open the mouths of the rivers to all nations, this having been the policy of those nations who possess the mouths of the Rhine, the Danube, the Po, and the Tagus, with some others. But the system of colonization, which has always heretofore prevailed, proves, that the mother-country is ever anxious to engross to itself the trade of its colonies, and affords us every reason to apprehend that Spain will not readily admit us to pass through her territory to carry on a trade, either with each other, or with foreign nations. This right we may insist on, and perhaps it may be conceded to us; but it is possible that it may be denied. At all events, it may prove the source of endless disagreement, and perpetual hostility.

In this respect East Florida may not, perhaps, be so important, but its acquisition is nevertheless deemed desirable. From its junction with the state of Georgia at the river St. Mary's, it stretches nearly four hundred miles into the sea, forming a large peninsula, and has some very fine harbours. The southern point, Cape Florida, is not more than one hundred miles from

the Havanna, and the possession of it may be beneficial to us in relation to our trade with the West-Indies. It would likewise make our whole territory compact, would add considerably to our sea coast, and by giving us the Gulf of Mexico for our southern boundary, would render us less liable to attack, in what is deemed the most vulnerable part of the Union.

From the foregoing view of facts, it must be seen that the possession of New-Orleans and the Floridas will not only be required for the convenience of the United States, but it will be demanded by their most imperious necessities. The Mississippi and its branches, with those of other rivers above referred to, drain an extent of country not less perhaps than one half of our whole territory, containing at this time one eighth of our population, and progressing with a rapidity beyond the experience of any former time, or of any other nation. The Floridas and New-Orleans command the only outlets to the sea, and our best interests require that we should get possession of them. This requisition, however, arises not from a disposition to increase our territory; for neither the Floridas nor New-Orleans offer any other inducements than their mere geographical relation to the United States. But if we look forward to the free use of the Mississippi, the Mobile, the Apalachicola, and the other rivers of the west, by ourselves and our posterity, New-Orleans and the Floridas must become a part of the United States, either by purchase or by conquest.

The great question then which presents itself is, shall we at this time lay the foundation for future peace, by offering a fair and equivalent consideration? or shall we hereafter incur the hazards and the horrors of war? The government of the United States is differently organized from any other in the world. Its object is the happiness of man; its policy and interest to pursue right by right means. War is the great scourge of the human race, and should never be resorted to but in cases of the most imperious necessity. A wise government will avoid it when its views can be attained by peaceful measures. Princes fight for glory, and the blood and

treasure of their subjects is the price they pay. In all nations the people bear the burdens of war, and in the United States the people rule. Their representatives are the guardians of their rights, and it is the duty of those representatives to provide against any event which may, even at a distant day, involve the interests and the happiness of the nation. We may indeed have our rights restored to us by treaty, but there is a want of fortitude in applying temporary remedies to permanent evils; thereby imposing on our posterity a burden which we ourselves ought to bear. If the purchase can be made we ought not to hesitate. If the attempt should fail, we shall have discharged an important duty. War may be the result; but the American nation, satisfied with our conduct, will be animated by one soul, and will unite all its energies in the contest. Foreign powers will be convinced that it is not a war of aggrandizement on our part, and will therefore feel no unreasonable jealousies towards us. We shall have proved that our object was justice; it will be seen that our propositions were fair; and it will be acknowledged that our cause is honourable. Should alliances be necessary, they may be advantageously formed. We have merited, and therefore shall possess, general confidence. Our measures will stand justified, not only to ourselves and our country, but to the world.

In another point of view, perhaps, it would be preferable to make the purchase, as it is believed that a smaller sum would be required for this object, than would necessarily be expended, if we should attempt to take possession by force; the expences of a war being almost incalculable. The committee have no information before them to ascertain the amount for which the purchase can be made, but it is hoped that with the assistance of two millions of dollars in hand, this will not be unreasonable. A similar course was pursued for settling our differences with the regency of Algiers, by an appropriation of one million of dollars prior to the commencement of the negotiation, and we have since experienced its beneficial effects.

Under these impressions, therefore, the committee recommend the adoption of the resolution referred to them in the following words, viz.

*Resolved*, That a sum of two millions of dollars, in addition to the provision heretofore made, be appropriated to defray any expences which may be incurred in relation to the intercourse between the United States and foreign nations: to be paid out of any money that may be in the treasury not otherwise appropriated, and to be applied under the direction of the president of the United States, who, if necessary, is hereby authorized to borrow the same or any part thereof, an account whereof, as soon as may be, shall be laid before congress.

## PRESIDENT'S MESSAGE.

*TO THE SENATE AND HOUSE OF REPRESENTATIVES  
OF THE UNITED STATES.*

IN calling you together, fellow-citizens, at an earlier day than was contemplated by the act of the last session of congress, I have not been insensible to the personal inconveniences necessarily resulting from an unexpected change in your arrangements, but matters of great public concernment have rendered this call necessary ; and the interest you feel in these will supercede, in your minds, all private considerations.

Congress witnessed, at their late session, the extraordinary agitation produced in the public mind, by the suspension of our right of deposit, at the port of New-Orleans, no assignment of another place having been made according to treaty. They were sensible that the continuance of that privation would be more injurious to our nation, than any consequences which could flow from any mode of redress ; but reposing just confidence in the good faith of the government, whose officer had committed the wrong, friendly and reasonable representations were resorted to, and the right of deposit was restored.

Previous, however, to this period, we had not been unaware of the danger to which our peace would be perpetually exposed, whilst so important a key to the commerce of the Western country remained under foreign power,

Difficulties too, were presenting themselves as to the navigation of other streams, which arising within our territories, pass through those adjacent. Propositions had therefore been authorized for obtaining on fair conditions the sovereignty of New-Orleans, and of other possessions in that quarter interesting to our quiet, to such extent as was deemed practicable ; and the provi-

sional appropriation of two millions of dollars, to be applied and accounted for by the president of the United States, intended as part of the price, was considered as conveying the sanction of congress to the acquisition proposed. The enlightened government of France saw with just discernment, the importance, to both nations, of such liberal arrangements, as might best and permanently promote the peace, interests, and friendship of both : and the property and sovereignty of all Louisiana, which had been restored to them, has on certain conditions been transferred to the United States by instruments bearing date the 30th of April last. When these shall have received the constitutional sanction of the senate, they will, without delay, be communicated to the representatives for the exercise of their functions as to those conditions which are within the powers vested by the constitution in congress. Whilst the property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the western states, and an uncontroled navigation through their whole course, free from collision with other powers, and the dangers to our peace from that source, the fertility of the country, its climate, and extent, promise in due season, important aids to our treasury, an ample provision for our posterity, and a wide spread for the blessings of freedom and equal laws.

With the wisdom of congress it will rest to take those ulterior measures which may be necessary for the immediate occupation, and temporary government of the country; for its incorporation into our union; for rendering the change of government a blessing to our newly adopted brethren; for securing to them the rights of conscience and of property; for confirming to the Indian inhabitants their occupancy and self government, establishing friendly and commercial relations with them, and for ascertaining the geography of the country acquired; such materials for your information relative to affairs in general as the short space of time has permitted me to collect, will be laid before you when the subject shall be in a state for your consideration.

Another important acquisition of territory has also been made, since the session of congress. The friendly tribe of Kaskaskia Indians, with which we have never had a difference, reduced by the wars and wants of savage life to a few individuals, unable to defend themselves against the neighbouring tribes, has transferred its country to the United States, reserving only for its members what is sufficient to maintain them in an agricultural way. The considerations stipulated are, that we shall extend to them our patronage and protection, and give them certain annual aids, in money, in implements of agriculture, and other articles of their choice. This country, among the most fertile within our limits, extending along the Mississippi from the mouth of the Illinois to and up the Ohio, though not so necessary as a barrier, since the acquisition of the other bank, may yet be well worthy of being laid open to immediate settlement, as its inhabitants may descend with rapidity in support of the lower country, should future circumstances expose that to foreign enterprize. As the stipulations in this treaty also involve matters within the competence of both houses only, it will be laid before congress, as soon as the senate shall have advised its ratification.

With many of the other Indian tribes, improvements in agriculture and household manufacture are advancing; and, with all, our peace and friendship are established on grounds much firmer than heretofore. The measure adopted, of establishing trading houses among them, and of furnishing them necessaries in exchange for their commodities, at such moderate prices as leave no gain, but cover us from loss, has the most conciliatory and useful effect on them, and is that which will best secure their peace and good-will.

The small vessels authorized by congress, with a view to the Mediterranean service, have been sent into that sea, and will be able more effectually to confine the Tripoline cruisers within their harbours, and supersede the necessity of convoy to our commerce in that quarter. They will sensibly lessen the expences of that service the ensuing year.

A further knowledge of the ground in the north eastern and north western angles of the United States, has evinced, that the boundaries established, by the treaty of Paris, between the British territories and ours in those parts, were too imperfectly described to be susceptible of execution. It has therefore been thought worthy of attention, for preserving and cherishing the harmony and useful intercourse subsisting between the two nations, to remove, by timely arrangements, what unfavourable incidents might otherwise render a ground of future misunderstanding. A convention has therefore been entered into, which provides for a practicable demarcation of those limits, to the satisfaction of both parties.

An account of the receipts and expenditures of the year ending the 30th September last, with the estimates for the service of the ensuing year, will be laid before you by the secretary of the treasury, so soon as the receipts of the last quarter shall be returned from the more distant states. It is already ascertained, that the amount paid into the treasury, for that year, has been between eleven and twelve millions of dollars, and that the revenue, accrued during the same term, exceeds the sum counted on, as sufficient for our current expences, and to extinguish the public debt within the period heretofore proposed.

The amount of debt paid for the same year is about 3,100,000 dollars, exclusive of interest, and making with the payment of the preceding year, a discharge of more than eight millions and an half of dollars, of the principal of that debt, besides the accruing interest, and there remains in the treasury nearly six millions of dollars. Of these eight hundred and eighty thousand have been received for payment of the first instalment due under the British convention of January the 8th, 1802, and two millions are what have been before-mentioned, as placed by congress under the power and accountability of the president, towards the price of New-Orleans and other territories acquired, which, remaining untouched, are still applicable to that object, and go in diminution of the sum to be funded for it.

Should the acquisition of Louisiana be constitutionally confirmed and carried into effect, a sum of nearly thirteen millions of dollars will then be added to our public debt, most of which is payable after fifteen years ; before which term the present existing debt will all be discharged, by the established operation of the sinking fund. When we contemplate the ordinary annual augmentation of import, from increasing population and wealth....the augmentation of the same revenue by its extension to the new acquisition, and the economies which may still be introduced into our public expenditures, I cannot but hope, that congress, in reviewing their resources, will find means to meet the intermediate interest of this additional debt, without recurring to new taxes ; and applying to this object only the ordinary progression of our revenue, its extraordinary increase in times of foreign war, will be the proper and sufficient fund for any measures of safety or precaution, which that state of things may render necessary, in our neutral position.

Remittances for the instalments of our foreign debt having been found practicable without loss, it has not been thought expedient to use the power given by a former act of congress, of continuing them by re-loans, and of redeeming instead thereof equal sums of domestic debt, although no difficulty was found in obtaining that accommodation.

The sum of fifty thousand dollars, appropriated by congress for providing gun-boats, remains unexpended. The favourable and peaceable turn of affairs on the Mississippi, rendered an immediate execution of that law unnecessary, and time was desirable, in order that the institution of that branch of our force might begin on models the most approved by experience. The same issue of events dispensed with a resort to the appropriation of a million and a half of dollars, contemplated for purposes which were effected by happier means.

We have seen with sincere concern the flames of war lighted up again in Europe ; and nations with which we have the most friendly and useful relations, engaged

in mutual distraction. While we regret the miseries in which we see others involved, let us bow with gratitude to that kind Providence, which, inspiring with wisdom and moderation our late legislative councils, while placed under the urgency of the greatest wrongs, guarded us from hastily entering into the sanguinary contest, and left us only to look on and pity its ravages. These will be heaviest on those immediately engaged. Yet the nations pursuing peace will not be exempt from all evil. In the course of this conflict, let it be our endeavour, as it is our interest and desire, to cultivate the friendship of the belligerent nations by every act of justice, and of innocent kindness; to receive their armed vessels with hospitality from the distresses of the sea, but to administer the means of annoyance to none; to establish in our harbours such a police as may maintain law and order; to restrain our citizens from embarking individually in a war in which their country takes no part; to punish severely those persons, citizens or aliens, who shall usurp the cover of our flag, for vessels not entitled to it, infecting thereby with suspicion those of real Americans, and committing us into controversies for the redress of wrongs not our own: to exact from every nation the observance towards our vessels and citizens, of those principles and practices which all civilized people acknowledge: to merit the character of a just nation, and maintain that of an independent one, preferring every consequence to insult and habitual wrong. Congress will consider whether the existing laws enable us efficaciously to maintain this course with our citizens in all places, and with others, while within the limits of our jurisdiction, and will give them the new modifications necessary for these objects. Some contraventions of right have already taken place; both within our jurisdictional limits, and on the high seas. The friendly dispositions of the governments from whose agents they have proceeded, as well as their wisdom and regard for justice, leave us in reasonable expectation that they will be rectified, and prevented in future; and that no act will be countenanced by them, which threatens to disturb our friendly intercourse. Separated

by a wide ocean from the nations of Europe, and from the political interests which entangle them together..... with productions and wants which render our commerce and friendship useful to them, and theirs to us, it cannot be the interest of any to assail us, nor ours to disturb them. We should be most unwise indeed, were we to cast away the singular blessings of the position in which nature has placed us....the opportunity she has endowed us with, of pursuing, at a distance from foreign contentions, the paths of industry, peace, and happiness, of cultivating general friendship, and of bringing collisions of interest to the umpirage of reason, rather than of force. How desirable then must it be, in a government like ours, to see its citizens adopt individually, the views, the interests, and the conduct, which their country should pursue! divesting themselves of those passions and partialities which tend to lessen useful friendships, and to embarrass and embroil us in the calamitous scenes of Europe. Confident, fellow-citizens, that you will duly estimate the importance of neutral dispositions, towards the observance of neutral conduct, that you will be sensible how much it is our duty to look on the bloody arena spread before us, with commiseration indeed, but with no other wish than to see it closed; I am persuaded you will cordially cherish these dispositions, in all discussions among yourselves, and in all communications with your constituents. And I anticipate with satisfaction the measures of wisdom, which the great interests now committed to you, will give *you* an opportunity of providing, and *myself* that of approving, and of carrying into execution, with the fidelity I owe to my country.

TH. JEFFERSON.

October 17, 1803.

## TREATY

BETWEEN THE UNITED STATES OF AMERICA  
AND THE FRENCH REPUBLIC.

THE president of the United States of America, and the first consul of the French republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire an. 9, (30th September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid the 27th of October, 1795, between his catholic majesty and the United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit, the president of the United States, by and with the advice and consent of the senate of the said states, Robert Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states, near the government of the French republic; and the first consul in the name of the French people, citizen Francis Barbe Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles :

## ARTICLE I.

Whereas by article the third of the treaty concluded at St. Idelfonso, the 19th Vendemiaire, an. 9, (1st October, 1800) between the first consul of the French republic and his catholic majesty, it was agreed as follows :

“ His catholic majesty promises and engages on his part, to cede to the French republic, six months after the full and

entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony and province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states."

And whereas, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestible title to the domain and to the possession of the said territory. The first consul of the French republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States, in the name of the French republic, for ever and in full sovereignty, the said territory with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above-mentioned treaty, concluded with his catholic majesty.

## ARTICLE II.

In the cession made by the preceding article, are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

## ARTICLE III.

The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free en-

joyment of their liberty, property, and the religion which they profess.

#### ARTICLE IV.

There shall be sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his catholic majesty the said country and its dependencies, in the name of the French republic, if it has not already been done, as to transmit it in the name of the French republic to the commissary or agent of the United States.

#### ARTICLE V.

Immediately after the ratification of the present treaty by the president of the United States, and in case that the first consul's shall have been previously obtained, the commissary of the first consul shall remit all military posts of New-Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the president to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible in the course of three months after the ratification of this treaty.

#### ARTICLE VI.

The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

#### ARTICLE VII.

As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on, it has been

agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France, or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New-Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States, coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than that paid by the citizens of the United States.

During the space of time above-mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory: the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is however well understood that the object of the above article is to favour the manufactures, commerce, freight, and navigation of France and of Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandize of the United States, or any right they may have to make such regulations.

#### ARTICLE VIII.

In future and for ever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favoured nations in the ports above-mentioned.

#### ARTICLE IX.

The particular convention signed this day by the respective ministers, having for its object to provide for the pay-

ments of debts due to the citizens of the United States by the French republic, prior to the 30th September, 1800, (8 Vendemiaire, an. 9) is approved and to have its execution in the same manner as if it had been inserted in this present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular convention signed at the same date as the present treaty, relative to a definitive rule between the contracting parties, is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

### ARTICLE X.

The present treaty shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner if possible.

IN FAITH WHEREOF the respective plenipotentiaries have signed these articles in the French and English languages; declaring, nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto affixed their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French republic, and the 30th of April, 1803.

ROBERT R. LIVINGSTON.

BARBE MARBOIS.

JAMES MONROE.

## CONVENTION

BETWEEN THE UNITED STATES OF AMERICA  
AND THE FRENCH REPUBLIC.

THE president of the United States of America, and the first consul of the French republic, in the name of the French people, in consequence of the treaty of cession of Louisiana, which has been signed this day, wishing to regulate definitively every thing which has relation to the said cession, have authorized, to this effect, the plenipotentiaries, that is to say : the president of the United States has, by and with the advice and consent of the senate of the said states, nominated for their plenipotentiaries, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said United States, near the government of the French republic ; and the first consul of the French republic, in the name of the French people, has named as plenipotentiary of the said republic, the citizen Francis Barbe Marbois ; who, in virtue of their full powers, which have been exchanged this day, have agreed to the following articles :

## ARTICLE I.

The government of the United States engages to pay to the French government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of the debts due by France to the citizens of the United States.

## ARTICLE II.

For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions, two hundred and fifty thousand dollars, bearing an interest of six per cent per annum, payable half yearly in London, Amsterdam, or Paris,

amounting by the half year to three hundred and thirty-seven thousand, five hundred dollars, according to the proportions which shall be determined by the French government to be paid at either place: the principal of the said stock to be reimbursed at the treasury of the United States, in annual payments of not less than three millions of dollars each, of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the government of France, or to such person or persons as shall be authorised to receive, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the government of the United States.

It is further agreed, that if the French government should be desirous of disposing of the said stock to receive the capital in Europe, at shorter terms, that its measures for that purpose shall be taken so as to favour in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock.

### ARTICLE III.

It is agreed that the dollar of the United States, specified in the present convention, shall be fixed at five francs 3333-10000ths, or five livres eight sous tournois.

The present convention shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months, to date from this day, or sooner if possible.

IN FAITH OF WHICH, the respective plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language; to which they have hereunto affixed their seals.

Done at Paris the tenth of Floreal, eleventh year of the French republic, (30th April, 1803).

ROBERT R. LIVINGSTON.

BARBE MARBOIS.

JAMES MONROE.

## CONVENTION

BETWEEN THE UNITED STATES OF AMERICA  
AND THE FRENCH REPUBLIC.

THE president of the United States of America, and the first consul of the French republic, in the name of the French people, having by a treaty of this date terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendemiaire, ninth year of the French republic (30th September, 1800) to secure the payment of the sums due by France to the citizens of the United States, have respectively nominated as plenipotentiaries, that is to say, the president of the United States of America, by and with the advice and consent of their senate, Robert R. Livingston, minister plenipotentiary, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states, near the government of the French republic; and the first consul, in the name of the French people, the citizen Francis Barbe Marbois, minister of the public treasury; who, after having exchanged their full powers, have agreed to the following articles:

## ARTICLE I.

The debts due by France to citizens of the United States, contracted before the 8th of Vendemiaire, ninth year of the French republic (30th September, 1800), shall be paid according to the following regulations, with interest at six per cent, to commence from the period when the accounts and vouchers were presented to the French government.

## ARTICLE II.

The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot

exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exception of the following articles, shall not be admitted to the benefit of this provision.

### ARTICLE III.

The principal and interests of the said debts shall be discharged by the United States, by orders drawn by their minister plenipotentiary on their treasury : these orders shall be payable sixty days after the exchange of ratifications of the treaty and the convention signed this day, and after possession shall be given of Louisiana by the commissaries of France to those of the United States.

### ARTICLE IV.

It is expressly agreed, that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been, and are yet, creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention, 8th Vendemiaire, ninth year (30th September, 1800).

### ARTICLE V.

The preceding articles shall apply only, 1st, to captures, of which the council of prizes shall have ordered restitution, it being well understood, that the claimant cannot have recourse to the United States otherwise than he might have had to the government of the French republic, and only in case of insufficiency of the captors ; 2d, the debts mentioned in the said fifth article of the convention, contracted before the 8th Vendemiaire, an. 9 (30th September, 1800), the payment of which has been heretofore claimed of the actual government of France, and for which the creditors have a right to the protection of the United States ; the said 5th article does not comprehend prizes whose condemnation has been or shall be confirmed : it is the express intention of

the contracting parties not to extend the benefit of the present convention to réclamations of American citizens, who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who by that reason, and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandize, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention, saving, however, to such persons their claims in like manner as if this treaty had not been made.

#### ARTICLE VI.

And that the different questions which may arise under the preceding article may be fairly investigated, the ministers plenipotentiary of the United States shall name three persons who shall act from the present and provisionally, and who shall have full power to examine, without removing the documents, all the accounts of the different claims already liquidated by the bureaux established for this purpose by the French republic, and to ascertain whether they belong to the classes designated by the present convention, and the principles established in it, or if they are not in one of its exceptions; and on their certificate, declaring that the debt is due to an American citizen, or his representative, and that it existed before the 8th Vendemiaire, 9th year (30th September, 1800), the debtor shall be entitled to an order on the treasury of the United States, in the manner prescribed by the third article.

#### ARTICLE VII.

The same agents shall likewise have power, without removing the documents, to examine the claims which are prepared for verification, and to certify those which ought to be admitted, by uniting the necessary qualifications, and not having comprised in the exceptions contained in the present convention.

## ARTICLE VIII.

The same agents shall likewise examine the claims which are not prepared for liquidation, and certify in writing those which in their judgment ought to be admitted to liquidation.

## ARTICLE IX.

In proportion as the debts mentioned in these articles shall be admitted, they shall be discharged, with interest at six per cent, by the treasury of the United States.

## ARTICLE X.

And that no debt which shall not have the qualifications above-mentioned, and that no unjust or exorbitant demand may be admitted, the commercial agent of the United States at Paris, or such other agent as the minister plenipotentiary of the United States shall think proper to nominate, shall assist at the operations of the bureaux, and co-operate in the examinations of the claims; and if this agent shall be of opinion that any debt is not completely proved, or if he shall judge that it is not comprised in the principles of the fifth article above-mentioned, and if, notwithstanding his opinion, the bureaux established by the French government should think that it ought to be liquidated, he shall transmit his observations to the board established by the United States, who, without removing documents, shall make a complete examination of the debt and vouchers which support it, and report the result to the minister of the United States. The minister of the United States shall transmit his observations in all such cases to the minister of the treasury of the French republic, on whose report the French government shall decide definitively in every case.

The rejection of any claim shall have no other effect than to exempt the United States from the payment of it, the French government reserving to itself the right to decide definitively on such claim, so far as it concerns itself.

## ARTICLE XI.

Every necessary decision shall be made in the course of a year, to commence from the exchange of ratifications, and no reclamation shall be admitted afterwards.

## ARTICLE XII.

In case of claims for debts contracted by the government of France with citizens of the United States, since the 8th Vendemiaire, ninth year (30th September, 1800), not being comprised in this convention, may be pursued, and the payment demanded, in the same manner as if it had not been made.

## ARTICLE XIII.

This present convention shall be ratified in good and due form, and the ratifications shall be exchanged in six months from the date of the signature of the ministers plenipotentiary, or sooner if possible.

IN FAITH OF WHICH, the respective ministers plenipotentiary have signed the above articles both in the French and English languages, declaring nevertheless, that the present treaty has been originally agreed on and written in the French language, to which they have hereunto affixed their seals.

Done at Paris, the tenth of Floreal, eleventh year of the French republic, 30th April, 1803.

ROBERT R. LIVINGSTON.

BARBE MARBOIS.

JAMES MONROE.

# CONGRESS OF THE UNITED STATES.

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## HOUSE OF REPRESENTATIVES.

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SATURDAY, OCTOBER 22.

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### LOUISIANA TREATY.

THE following message was received from the president of the United States, by Mr. Harvie, his secretary.

*To the Senate and House of Representatives of the United States.*

In my communication to you of the 17th instant, I informed you that conventions had been entered into with the government of France for the cession of Louisiana to the United States. These, with the advice and consent of the senate, having now been ratified, and my ratification exchanged for that of the first consul of France, in due form, they are communicated to you for consideration in your legislative capacity. You will observe that some important conditions cannot be carried into execution, but with the aid of the legislature; and that time presses a decision on them without delay.

The ulterior provisions also suggested in the same communication, for the occupation and government of the country, will call for early attention. Such information, relative to its government, as time and distance have permitted me to obtain, will be ready to be laid before you within a few days. But as permanent arrangements for this object may require time and delibe-

ration, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the mean while, of order and tranquillity in the country, as the case may require.

TH. JEFFERSON.

October 21, 1803.

The message having been read :

*Mr. Huger* hoped the reading of the treaty and conventions would be dispensed with, and that they would be printed for the use of the members.

*Mr. Randolph* hoped they would be read.

The reading of course was proceeded with.....which being finished,

*Mr. Randolph* moved a reference of the message, and of the documents accompanying it, to the committee of the whole house on Monday, which motion was agreed to without a division.

*Mr. Randolph* begged leave to submit a resolution, arising out of the message, which he hoped would be considered at that time, for the purpose of referring it to the same committee to whom had been just referred the message.

*Resolved*, That provision ought to be made for carrying into effect the treaty and conventions concluded at Paris on the 30th April, 1803, between the United States of America and the French Republic.

Referred to the same committee without a division.

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MONDAY, OCTOBER 24.

*Mr. R. Griswold* said, that he had observed, by adverting to the message of the president of the 21st inst. that it was expected congress would forthwith provide by law for the preservation of order and tranquillity in the province of Louisiana. The general subject, together with the treaties with France of the 30th of April,

had been already referred to a committee of the whole house, and made the order of that day, and he presumed the first object which would engage the attention of the committee would be that to which he had alluded. He did not however think that the message of the president, or the treaty which attended it, furnished that evidence of our right to interfere in the government of Louisiana, which could justify the house in passing any law upon that subject.

He thought it became necessary to obtain further evidence of our title, before we attempted to exercise a jurisdiction over a country and over a people, whom perhaps we had no right to controul.

The only article, said Mr. G. which relates to the title, is the first article of the treaty, and it is thus expressed :

Art. 1. WHEREAS, by the article the third of the treaty concluded at St. Idelfonso, the 9th Vendemiaire, an. 9 (1st October, 1800), between the first consul of the French republic, and his catholic majesty, it was agreed as follows :

“ His catholic majesty promises and engages on his part to cede to the French republic, six months after the full and entire execution of the conditions and stipulations herein, relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states.”

This article in the first place recognizes, what has been well understood, that Louisiana was a province of Spain, and in the next place it declares, that by the treaty of France and Spain of the 1st of October, 1800, Spain has stipulated that she will, “ six months after the full and entire execution of the condition and stipulations relative to the duke of Parma, cede to France the province of Louisiana.” The title of the United States therefore, depends upon the execution of those conditions and stipulations. For it will be admitted, if France has never fulfilled the conditions, she has ac-

quired no title to the country, and could sell nothing, nor could we purchase. It becomes important then, before congress proceed to legislate for the government of these people, that we should ascertain what were the extent of the stipulations in respect to the duke of Parma, and whether those stipulations had been executed; for on this, our title might probably depend. A recurrence to the message and the treaty would throw no light upon these points, and it became necessary to look further before the house proceeded to decide.

The treaty of Idelfonso between France and Spain of the 1st of October, 1800, had been referred to in the treaty under consideration; it was the instrument by which France had acquired the title, if she had ever obtained one, and being one of the title deeds of the domain, it must be presumed that the government of the United States had been careful to obtain a copy.

That treaty was equally important to the executive and to the legislature, for without possessing it, it must be presumed that the executive could not have consented to the purchase, and without examining it, the legislature could not decide whether we had acquired a rightful jurisdiction over the country. Under these impressions he thought it necessary and proper that a call should be made on the president for a copy of that treaty.

Mr. Griswold said, he would observe also, that the treaty of Idelfonso would not probably ascertain all the facts which it was necessary to establish in regard to the title. That treaty contained only a promise to cede the country in question, as appeared by the article which had been transcribed; and this only upon the performance of certain conditions. The actual cession had not been disclosed; but for the purpose of clearing up the title, the deed or instrument of session ought to appear.

There was an additional fact which Mr. G. thought it important to ascertain, whether Spain had consented to the transfer of this country to the United States.— This fact may be important in several points of view. If Spain consents to the transfer, she either admits that

the conditions have been executed on the part of France, or she waves her claim to a full execution of them, and in either event it may be said that the claims of Spain have been extinguished. But if Spain has remonstrated against the transfer, it presents a strong reason to believe that the conditions have never been fulfilled, or if they have been fulfilled, that we shall be compelled to possess this country by force. The complexion and extent of our preparations to possess the country must in a measure be regulated by the disposition of Spain towards us.

With this view of the subject, Mr. G. said that he could not doubt the necessity of calling on the president for further information before the house proceeded to act. In doing this, however, he would be careful not to ask an improper disclosure of executive secrets, or interfere with the prerogatives of the executive in respect to treaties. The treaty of Idelfonso he presumed could be no secret, as one article of that instrument had been transcribed into the treaty under consideration. Nor could the actual cession, or any of the evidences of title be considered as secrets to be withheld from the legislature, because without possessing them, congress could never know what legislative provisions were necessary for a full execution of the treaty. He had always believed that the power of making treaties under the constitution belonged exclusively to the president with the consent of two thirds of the senate and that when a treaty was once fairly and constitutionally made and ratified, it became the law of the land, and as such every branch of the government was bound to carry it into execution. But in order to do this, it became necessary to know the extent and effect of the treaty. And in the present case, if it should be found after a full examination of the title, that the claim of France was defective, and of course that the United States had gained neither territory nor subjects by this quit-claim which France had given us, it would be absurd, and a direct usurpation, for congress to pass laws for governing the country. The call which he proposed to make would therefore be confined to those objects which must

be known, before the legislature can with a knowledge of the subject, decide how the treaty is to be carried into execution. And he would take the liberty of submitting to the house a resolution which was confined to those objects, and if seconded, would lay it on the table.

Resolved, that the president of the United States be requested to cause to be laid before this house, a copy of the treaty between the French republic and Spain, of the first of October, 1800, together with a copy of the deed of cession from Spain, executed in pursuance of the same treaty, conveying Louisiana to France (if any such deed exists); also copies of such correspondence between the government of the United States and the government or minister of Spain (if any such correspondence has taken place), as will show the assent or dissent of Spain to the purchase of Louisiana by the United States; together with copies of such other documents as may be in the department of state, or any other department of the government, tending to ascertain whether the United States have in fact acquired any title to the province of Louisiana by the treaties with France, of the 30th of April, 1803.

The house having proceeded to consider the resolution, when

*Mr. J. Randolph* rose and said, I hope the house will not agree to this resolution. I am well aware of the consequences which may result from requiring papers from the executive before the business comes fully before the house. The gentleman who brings it forward, has varied a little in mentioning the word *subject*. I know it is a favourite expression with the gentleman. The peculiar *penchant* of some gentlemen for this expression, will be an excuse for my varying my phraseology. A commissary has been sent from France to Louisiana, to do that which may be necessary, and of which the gentleman is doubtful, and to transmit his proceedings to the president of the United States. It appears by this, that provision is making, on the part of France, to put us in possession of the territory, and of the *citizens* of Louisiana, as soon as we on our part

ratify the treaty. There is therefore a necessity for our making provision to carry it into effect. There was in the famous treaty with Great Britain objections almost innumerable. Language of this kind was then held up in the house; it was said, we detest your treaty. A treaty now, very different from that of London—a treaty advantageous and popular, is made with France. If we find it a good treaty, we surely ought to make provision for it. Shall we take an exception to our own title, when France has pledged itself for its validity? Shall we refuse to be put in possession? Can any gentleman doubt that, as far as France can bestow, we have a title? Can they doubt, but that France has not a title from Spain? Will our passing an act to make provision for carrying this treaty into effect impair our title? If it should hereafter appear, that Spain has a title, and that title is un-conveyed to France, it certainly will not. It appears to me that it will be little better than a mockery, to enquire at this time whether we have a title to this territory. So long as we are informed by the executive that we are to be put in possession, and that he has powers so to do, we need not, in the present instance, enquire farther.

*Mr. Lyon.* I rise only to observe, that I think this resolution has been brought forward in a disrespectful manner. Had it been decent and respectful, I should have voted for it. It implies that the executive has made a bargain, to which he had no title. I wish the gentleman who brought this resolution forward had shown a little more respect for the executive. I have, for my own part, no objection to the documents being brought forward. I think they should be brought forward. Every person might have seen the fact from the newspapers. I only rose to mention the manner in which this business has been brought forward.

*Mr. Goddard.* The object to be obtained by seeing the papers requested to be laid before us, is to ascertain, whether France, from whom we have received a cession of Louisiana, had derived from Spain any title to that country. Gentlemen say, that it is unnecessary for us to know this; that France has declared in the treaty, that

she has an "incontestible title to the domain and to the possession of the said territory." Such indeed are the words of the treaty, but France has not left the matter here. If that declaration had been simply made, there would have been more in the argument; but the treaty has gone further, and told us what that *incontestible title* is. And what is it? All the title of France to the ceded territory is derived from the third article of her treaty with Spain, of the first October, 1800. That article is introduced into the treaty now on our tables, and is nothing more than a promise, on the part of his catholic majesty, "*to cede to the French republic, six months after the full and entire execution of the conditions and stipulations herein, relative to the duke of Parma, the colony and province of Louisiana,*" &c. Our treaty with France then goes on to say, "and whereas, in pursuance of the said treaty, and *particularly the third article*, the French republic has an *incontestible title*," &c. So that France not only tells us that she has an *incontestible title* to the ceded territory, but she also tells us what that *incontestible title* is; and it is nothing but a promise, on the part of Spain, to cede, six months after the fulfilment of certain conditions relating to the duke of Parma. What then do we purchase upon the face of the treaty itself? Not a country, but his catholic majesty's promise to cede a country, at a future time, and on certain conditions. Now, as the treaty itself furnishes no evidence of title, we enquire for the evidence on this subject. We ask, have the conditions of the treaty between France and Spain ever been fulfilled? Have the six months elapsed? If so, let us see the actual cession which Spain promised to make. If not, has Spain ever waved the performance of those conditions, and thereby yielded the title to France? If Spain has ever done this, we ask for the evidence of it. Let us know whether Spain assents or dissents to our taking possession of the country.

This information we desire, not for the purpose of ratifying or rejecting the treaty, this belongs to the president and senate alone; but for the purpose of ena-

bling us to judge, what laws are necessary to be passed, or whether any, for the government of the country.

But it is said that the treaty provides that a commissary shall be sent by France, to the ceded territory, to receive its possession from Spain and transmit it to us.

It is therefore of no importance to us to know, whether France has any title? If the commissary cannot receive possession from Spain, he cannot transmit it to us. But suppose the mandate of the first consul of France, is now law to Spain, may not the time come, when a different state of things will exist? And may we not, before we pay fifteen millions of dollars, enquire whether our title to the territory is sound?

But a gentleman from Virginia (Mr. Randolph) has said that there is a great difference between this case and that of the British treaty to which he has referred. In that case, says the gentleman, the house of representatives said to the president, "sir, *we detest your treaty.*" But this treaty, the gentleman says, has been hailed by the country as a blessed thing. I do not know, sir, how the people of this country can have expressed their approbation of this treaty. It has now for the first time been made public, and its terms and conditions have been heretofore unknown, and I cannot suppose that the people of this country will consider it as a blessed thing to pay fifteen millions of dollars for a country, to which they get no title.

*Mr. Smilie.* I remember something of the kind, that has been observed by the last gentleman who spoke, and it would be well to look into it. It was said upon a former occasion, that we had no right to call for papers, and I still think so; but we may judge how far it is necessary now to call for them. (Mr. S. here read the resolution moved to call for papers pending the British treaty). I see no occasion for so doing in the present instance.

*Mr. J. Randolph.* I should be willing to call for papers were they necessary, but I see no reason for the present resolution. The president has treated with the

first consul of France for Louisiana ; and the senate has ratified the treaty. The French have declared that they will send a commissary to give possession, as soon as the treaty was ratified by the senate. That has already been done, and I can state to this house that there is now a commissary there on the part of France.

*Mr. Elliot.* I greatly admire the talents of the gentleman who moved and supported this resolution, but I think it premature. The first of these gentlemen is not only inquisitive, but indefatigable ; the second ingenious and animated. The gentlemen wish to have it ascertained, whether we have a title to Louisiana. It is very true we have not attained an absolute jurisdiction, because the terms of the treaty are not yet complied with. The gentlemen's enquiries are visionary. Young as I am, and little versed in the subject, I am unwilling to enter at length upon it. The president tells us, that the enlightened government of France has, on certain conditions, and under certain stipulations, conveyed Louisiana to the United States of America. The gentleman (Mr. Goddard) asks, will the people be content to pay fifteen millions of dollars, not for a territory, but for a promise ? It was stipulated between France and Spain, that Spain should cede Louisiana, upon certain conditions to the duke of Parma, within six months. I acknowledge it to be only an assertion of the French that they have a title, and I confess that we do not receive at present any more than their title to the territory. No such consequences can result as those deprecated by the gentleman from Connecticut ; they are premature. A treaty has been entered into, by which France has transferred the right of domain ; and they send a commissary to deliver possession to the United States. Now if the treaty is carried into effect, we must have a legal title, and acquire possession. We ought to do every thing in our power to carry the treaty into effect, for we are not subject to pay a single cent until we are put in possession. Presuming upon the good faith of the French government, we may safely go on in making the provision. I conceive that the arguments of the two

gentlemen from Connecticut, with their abilities, can be of no avail.

*Mr. Thatcher.* The gentleman from Pennsylvania (Mr. Smilie) has compared the resolution before us to the call for papers respecting the treaty with Great Britain. There is not the least similarity between the two cases. The resolution adopted by the house, respecting the papers relative to the British treaty, was to request the president to lay before them "a copy of the instructions to the minister of the United States, who negotiated the treaty with the king of Great Britain, together with the correspondence and other documents relative to the said treaty," &c. The professed intention of those who voted for that resolution was to enquire into the merits and expediency of that treaty, and in case they disapproved of it, to withhold the appropriations necessary to carry it into effect. It appears from president Washington's answer to the house, which the gentleman has read, that this was the ground taken at that time. He tells the house, that "in deliberating upon this subject, it was impossible for me to lose sight of the principle which some have avowed in the discussion, or to avoid extending my views to the consequences which must flow from the admission of that principle." It was not pretended that the papers requested were necessary to assist the house in any act of legislation. If they had been, no doubt they would have been furnished. The president further observes, that "the treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light." We who support the motion of the gentleman from Connecticut, do not assume the right to judge of the merits of this treaty, or to withhold the necessary appropriations to carry it into effect, provided it shall appear to have been *constitutionally made*, and when thus made and ratified, we admit that a treaty becomes a law of the land. But we are called upon to legislate for a new territory. The object of the resolution under consideration is to ascertain whether we have acquired a new territory. By ad-

verting to the first article of the treaty on the table, we find that Spain, by the treaty of St. Idelfonso, agreed "to cede to France the province or colony of Louisiana, six months after the full and entire execution of certain conditions and stipulations relative to the duke of Parma." Our title to the colony of Louisiana must depend upon the execution of these stipulations on the part of France. It becomes, then, important to us to see the treaty of St. Idelfonso, that we may ascertain what the stipulations referred to were, and it is also highly important to ascertain whether Spain has consented to the cession of Louisiana to the United States. If we have received from France what amounts only to a quit-claim, and Spain has remonstrated against the cession, I presume the house would not think proper to institute and organise a government over this country. But if gentlemen are determined to take possession of Louisiana without the consent of Spain, it may alter essentially the legislative provisions which will be adopted. For with the consent of Spain we may take possession with a corps of civilians; without it, we shall require an army of soldiers. Gentlemen tell us, that they have seen an account of the consent of Spain published in a newspaper. Are we then to legislate upon the evidence of a newspaper account? It is with great surprise I see opposition to this resolution from gentlemen on the opposite side of the house. I trust, sir, if we are to pass laws for the government of a new territory, it will at least be ascertained that we have a new territory to govern.

*Mr. Nicholson*, of Maryland. I am extremely glad to find that the gentlemen on the other side have abandoned the ground they stood upon a few years ago, that they now come forward and say, that the executive is subject to be called on for papers. In those times they would have found themselves obliged to have carried this treaty into effect, whether good or bad, without calling for documents. In the right of this house calling for papers, I entirely acquiesce. In the present instance, however, I cannot see the necessity. What is it to us when once we are in possession of Louisi-

ana, if, like a cross child, she gave away her cake and wanted it back again. It will hereafter be found that France has a title to the territory and that she has commissioners to give us possession. For this we are to pay fifteen millions of dollars; but until we get possession we need not pay a single dollar of that sum. Why then call for papers? I agree with the gentlemen in calling for documents, but I do not understand calling upon the president for a deed from Spain to France; we may as well call upon the grand seignior, the emperor of Russia, or the dey of Algiers for such a deed. They have just as good a right to Louisiana as Spain. What care we for Spain, when once we are put in possession: we have made a purchase and it is but fit that we have the territory.

*Dr. Mitchell, of New-York.* I cannot agree with gentlemen who support this resolution. It appears that Tuscany was ceded to a branch of the Spanish Bourbons as an equivalent for Louisiana. When the contracts with the powers of Europe were complete, Spain cedes to France. The United States contract with France, and she has sent commissioners to deliver this territory in conformity with the treaty. I cannot therefore doubt but that France has a good title. The executive of the United States has entered into a treaty with France and the senate has ratified that treaty.

The gentlemen now say, we have not got actual possession. True; but we are offered it. We are to acquire a large domain, but we are not to have it for nothing. Not a single cent need we transfer to France, until we are put in possession. Yet we are told that we are going to act unwisely: that we are going to pay fifteen millions of dollars for a promise made by Spain to cede Louisiana to France. Our ministers abroad, and our president here, well knew what they were about, and we are bound to carry the treaty into effect with the utmost dispatch.

(Mr. Mitchell here entered into a geographical description of the boundaries of Louisiana, &c. and then continued.)

It was my intention to have moved for a postponement of this resolution. This is not a proper time to gain all the information we may think necessary on the subject. It is, in fact, only a waste of time, and I shall move that the consideration of the resolution be postponed.

*Mr. Findley*, of Pennsylvania. I think it is better to say at once whether we are to have these papers or not. I, myself, do not think them necessary. Shall we take doubts in contradiction to the president's message? to the treaty and convention with France? We have a right of making provision without calling for papers; though I believe some that are called for may be necessary.

*Mr. R. Griswold*. I cannot believe the gentleman from New-York (*Dr. Mitchell*) is serious in the motion for postponing the consideration of the question to a distant day. That gentleman must be perfectly sensible, that if the papers requested can be ever important, it must be at a time when this house are legislating for the government of the province.

It has often been repeated in this debate, that without possessing full and satisfactory evidence of our title to Louisiana, it is both dangerous and absurd to legislate for governing the country. Nothing which has been urged has, in my judgment, either weakened the principle contended for, or proved that the title can be ascertained, without those evidences of title which have been requested. If indeed it is expected that we shall provide for possessing and governing the country, without regard to the rights of Spain, or any other nation; then I admit that the papers in question are unnecessary, and so is the treaty and message also, and we may proceed to authorize the conquest by law. But if it is only expected that we shall possess the country under a fair and honourable purchase, then, most assuredly, it becomes us to ascertain, whether we have acquired a title by the instrument under which we claim. I have been one of those who have believed that the power of making treaties belongs exclusively to the president and a constitutional majority of the senate, nor have I at

this time seen any reason to doubt the correctness of that opinion, and I do not feel any hesitation in declaring, that if the treaty under consideration has been fairly and constitutionally made and ratified, it becomes a law, and that this house, together with every department of the government, is bound to carry it into execution. But can it be imagined, that it results from this, that we are bound to provide by law for executing the treaty, before we know what the treaty is, and what are its effects? If the treaty contained within itself all the information which is necessary for ascertaining its import and effect, there might be great weight in the argument against calling for farther information; but when the import of the instrument is uncertain, and the great question of title, which must be the foundation of all our proceedings upon this subject, remains altogether unsettled, it is indeed astonishing that gentlemen should be willing to proceed without obtaining those evidences of title, which alone can justify us in extending the government of the union over this new people. I wish it to be distinctly understood, that I do not claim the right of deciding on the merits of this treaty, I only claim a right to know what we have acquired by the treaty; that by knowing this we may be able to discover what legislative provisions are necessary for its execution.

I wish again to impress it on gentlemen, that France has only ceded to us the right which she acquired by the third article of the treaty of Idelfonso, and that right was no more than a promise on the part of Spain to cede the country upon the execution of the stipulations in favour of the duke of Parma, and it cannot be necessary for me again to repeat, that a promise to cede is not a cession, and more especially when that promise is clogged with unknown conditions.

The engagement of France in the fifth article, to which gentlemen have referred, and by which it is agreed that France shall send a commissary to receive the possession from Spain, and to deliver possession to the agent of the United States, has no application to the present question.

The question under consideration is, has the United States a right to govern Louisiana? That right does not depend upon what may be done hereafter, it depends upon the title which we have acquired by the treaty; and the question still returns upon us, have we acquired a title by that instrument?

It is possible that Spain may refuse possession to the French commissary, or France may neglect to send a commissary to receive the possession.

In either of these events, if it shall be fully ascertained that we have acquired a title to the country, I presume the language of this country will correspond with the language of the gentleman from Maryland (Mr. Nicholson), and we shall say with him, more especially as it respects New-Orleans, "what care we for the claims or possession of Spain! the country is ours, and we will have it." The house ought not therefore to legislate with a view to any thing which France may do hereafter, either to give us the title or possession of the country. We ought to stand upon the ground of our own right and our own title, without looking to the guarantee of any foreign nation.

A gentleman from Kentucky (Mr. Sandford) had said, that he held in his possession evidence that France had already acquired possession of the country. This I declare to be news, of which I never have heard a lip, until it has been announced by the gentleman from Kentucky. The account however, I presume, is not official; it has probably been taken from some newspaper, and can furnish but little evidence to establish the title to this immense country.

I am not tenacious of the particular form in which this resolution shall pass. I look only to the substance, and ask for information. If it is supposed that the resolution, so far as it relates to the consent of Spain, interferes with the secrets of the cabinet, I shall be content to place it on such ground, as will barely obtain from the president a declaration whether Spain has given her consent or not.

I admit that if this treaty is to be carried into execution, it ought to be done speedily; and I have no wish

unnecessarily to retard those gentlemen who believe that it ought to be considered as a constitutional instrument, and executed accordingly. But for the sake of knowing how we can or ought to act, in regard to the manner of executing it, it is in my judgment indispensibly necessary that we should possess the papers requested.

*Mr. J. Randolph.* When the gentleman first introduced this resolution, I thought it rather disorderly, but as it was not noticed from the chair, I did not interfere. As on this, as well as on other occasions, I have seen rules adopted of getting rid of such a motion as that which is now before the house. I cannot reconcile the gentleman's theory with his practice. He says the treaty may be properly ratified, but not properly made. (Mr. Griswold here rose to explain. I said, continued Mr. G. if the treaty was constitutionally made and ratified, we are bound to carry it into execution. Mr. Randolph went on). I cannot still understand the gentleman. I grant we are bound to carry this treaty into effect, and it is the duty of the committee to enquire what provisions are necessary to be made, and whether we are to take possession by civilians, or by soldiers. The gentleman says there are dubious points, and where were there not dubious points in a business of the magnitude of Louisiana? The gentleman has discovered a new position. If there are these dubious points, does it not lie in this committee to investigate them? If a difficulty arises it may become a subject of future investigation. The gentleman, while he acknowledges a moral duty, may refuse his sanction—he might have refused his sanction to the treaty of 1793, and he may refuse it now. With regard to the stipulations on the part of France, his catholic majesty agrees to cede six months after the ratification of the treaty on the part of the United States. By the arguments of the gentleman, we must send a venire to Italy, to enquire whether France has performed her part of the treaty and an issue must be made up thereon. I am glad to find no more of that hostile spirit, which once prevailed in a part of this house. By no treaty are the boundaries of Loui-

siana defined, and though it has often been attempted, it has never been done. It will belong to Spain, hereafter to settle the boundaries with the United States, as in a similar case with Great Britain. When we have decided whether we shall take possession of this territory or not, it will be the time for the gentleman to make these enquiries. Another ingenious gentleman, Mr. Goddard, says, that though the *ipsi dixit* of the first consul is now a law to Spain, yet, he asks, how long may it continue so? This was the very reason why Great Britain so long withheld from treating with the republic of France. There is no confidence to be placed in them; they may make war again, said the British ministers. So Spain may take possession again when she is strong. This is the gentleman's argument. We may now take possession, then Spain in her turn takes possession from us. I do not understand such arguments. The president has sent us his message, and this is all that is at present necessary. If gentlemen can show a dissent on the part of Spain, then it will be time enough to enter with an armed force. I hope the committee will immediately proceed to carry the treaty into effect, and I shall vote to that effect.

*Mr. Goddard.* As I had no right to demand, I had no reason to expect, a compliment from the gentleman from Virginia (Mr. Randolph). But although the gentleman is not willing to allow to the remarks which I had the honour to submit to the house, when I was first up on this question, the credit of ingenuity, yet as he has seen fit to bestow no small attention to them, I trust the house will indulge me a few moments, while I reply.

The gentleman has been pleased to enquire after the hostile spirit which actuated me and my political friends on a former occasion, when this subject was under consideration. To what does the gentleman allude? Was there ever, sir, a proposition before this house to acquire Louisiana by force? Is it in the recollection of any gentleman that this country was deemed so important to the United States, that any members of this house pro-

posed to go to war to acquire it? Was there ever, indeed, a proposition to acquire it in any manner?

I answer there was not. Look at the report of the secret committee, made last session, and now published. Does it intimate that it would be desirable to annex the immense country of Louisiana to the United States? No; the project to do this is to me novel. But, sir, I do recollect, at the last session of congress, that I saw the rights of the United States on the banks of the Mississippi invaded—her honour insulted—a most solemn treaty infracted. The deliberate wrongs and insults which were offered to the United States, I then was, and trust I always shall be, ready to redress, whether they arise upon the banks of the Mississippi, or in any other quarter of the union. Judging from the little information which was then afforded us, I should have been willing to this end to have taken possession of the Island of Orleans, until our rights were restored, although no proposition of that kind was before us. But, for this, is a wish to involve the country in war to be ascribed to me, and that for the purpose of acquiring a territory not our own? No, sir, I repeat it, no disposition, to my knowledge, was ever entertained of acquiring the territory now ceded to the United States by force, as the gentleman seems to insinuate. The war-whoop has been raised, and a disposition to plunge the United States into war, and to acquire this country, *per fas aut nefas*, ascribed to us; but I did not expect to have seen countenance given to it here. I then felt, and now feel, the imputation to be unjust; at the same time I am ready to acknowledge the existence of a disposition to redress the wrongs of my country. But I admit the navigation of the river Mississippi to be vastly important, that great sacrifices ought to be made to secure it to the United States; and suppose I admit, for argument sake, that we were disposed to go to war to secure it; what follows? A different course has been pursued; a treaty is now presented to us, by which it is said Louisiana is ceded to the United States: are we precluded from enquiring whether any title has been

acquired to the ceded country? Are we not to be permitted to enquire, whether the seeds of future war are not sown by this cession? Are we, sir, to pay fifteen millions of dollars for the purchase, and still go to war with Spain for the possession of the country? May we not desire gentlemen to give us war or peace? If the country must be had, let us either acquire it by force, or if we purchase it, let us have the peaceable possession. We request documents, if any there are, which will prove to us that France, of whom we have purchased, had any title. The treaty does not show this, but the reverse.

A gentleman from Virginia (Mr. Randolph) has said, that France has declared to us in the treaty, that she has an incontestible title to the domain, and possession of the ceded country; that it is the business of France to see to it, that we have the quiet and peaceable possession, and that this ought to satisfy us. Had this treaty left the matter in a simple declaration on the part of France, that her title to the ceded territory was incontestible, it would have been a very different thing; but she is careful to explain this declaration, and state to us clearly what that title is; and, sir, let any person read the third article of the treaty of April 1, 1800, between France and Spain, and they will see, that no title is thereby acquired by France. It is true that his catholic majesty promises to cede the country to France. But when? Six months after the full and entire execution of certain conditions and stipulations relative to the duke of Parma. And France cedes the right, acquired in virtue of *that* article, to the United States, which is, in other words, her right to the king of Spain's conditional promise. To know whether this promise is binding on Spain, we ask to be informed, what is this treaty? And what are these conditions and stipulations? Has France ever performed them? Is Spain satisfied on this subject, and has Spain made the promised cession? If not, has she waved their performance? In either case France *may* have acquired a good title; but if they have not been fulfilled or waved, she had none: if none, none could be conveyed to us,

and the consequence is, that we buy a conditional promise made by Spain to France, to cede the territory in question, and the conditions not fulfilled. But it has been answered, that we do not pay our money until we get possession. I admit it; but suppose, as I have before said, that Spain, yielding to imperious circumstances, does not at present resist our taking possession, is it of no importance to us to see to it, that right and title are on our side?

When the politics of Europe shall assume a different aspect, Spain may re-assert her right, and say to us, this was a mere usurpation on the part of France; we never did cede this country to France; a promise to be sure was made to cede upon certain conditions; those conditions were never fulfilled; you bought with your eyes open; your title is unsound, and you knew it at the time of the purchase; restore to us a country, of which we have been unjustly deprived: ought we not to see to it, that Spain can have no such claim upon us, before we purchase? And should we not, in case of a future contest with Spain on this subject, proceed with much more confidence, if we know that the title, as well as the possession, is in us?

But suppose Spain should wrest it from us, and application should be made to France for indemnity. Would not she also say, you bought with full notice of what our title was. Look at your treaty; it says we had only a conditional promise from Spain to cede to us; such title as we had, in virtue of that promise, we gave to you, and you paid us for nothing more; settle that matter with Spain: such would be the language of France. Suppose, sir, we had purchased the island of Malta of Great Britain; she told us that her title was derived from the treaty of Amiens, and she called it an incontestible title, and offered to deliver to us the possession; should we be satisfied with this, or should we not call for that treaty, and see what were its conditions and stipulations? I trust we should; and what difference is there between the two cases? In this case, therefore, I contend it is highly proper that we should see the documents, if any there are, which prove

that France had any title to the ceded territory ; gentlemen have taken various methods to get rid of this claim ; one gentleman refers us to newspaper information ; the learned gentleman from New-York has referred us to what is well known throughout Europe ; suppose, with all due humility, we acknowledge our ignorance of what is so well known in Europe ; what follows ? Why, that we have more need of the information we now seek, to enable us to form correct opinions on the subject before us. This gentleman and his friend from Virginia, have also undertaken to tell us about this treaty which we wish to see, and I should have regretted that the word "*boundaries*," had been made use of, had it not given the two learned gentlemen an opportunity to display their information on this subject ; they inform us that that treaty will not afford us the information we wish. The gentlemen may have access to the cabinet ; but I belong to a humble and unlearned minority. The majority of this house, who may be acquainted with its contents, may say to us, " you must act in the dark, it is sufficient that we have seen it." For my part, although disposed to pay great deference to the learning of the gentlemen from New-York and Virginia, yet as a representative of the American people, called upon to legislate on objects of vast interest, I consider myself entitled to correct information, and that I ought not, instead of receiving this information, to be referred to newspaper statements.

With regard to the precedent in the case of the British treaty, appealed to on the other side, we may say, if correct on that occasion, it is likewise correct on this occasion. You called for papers then, and we call for them now. But I conceive there is no analogy between the cases. For how does our call affect or impugn the treaty-making power of the president and senate ?

I apprehend that to postpone this motion is to negative it. We call for information. Gentlemen say, act first, and we will then give it you. Need gentlemen be again told that we do not make the demand through a blind curiosity, but because we deem it absolutely ne-

cessary to know whether the title is in us, before we pass the laws to carry the treaty into effect.

*Mr. Elliot.* Mr. Speaker, as I have not spoken on the question of postponement, and although my views of the subject are almost exactly the same with those of the gentleman from New-York who made the motion, yet as I shall vote against the motion, and as I wish to appear consistent in my conduct, I am under the necessity of again asking the indulgence of the house for a few moments; it shall be but for a few moments only. When I was up before, I mentioned that I had other objections to the resolution than merely its prematurity, but that I did not think it necessary to state them. Those objections apply to the form of the resolution, to the propriety and decorousness of its expressions. It struck me at first, it still strikes me, as improper, and indecorous towards the president. I have no idea that such was the intention of the gentleman from Connecticut, for I know, at least I believe, that he is a gentleman of honourable feelings, and utterly incapable of any thing of that nature; but such was the impression on my mind, and I cannot remove it. I am therefore for an absolute rejection of every part of the resolution; I cannot vote even for a postponement.

I hope I shall not be considered as guilty of very great vanity in observing that my objections to the resolution as being premature, have not been directly answered by gentlemen on the other side of the house. It is said the treaty may not have been constitutionally made. This must be determined from the face of the treaty itself, and not from any of those extraneous considerations which gentlemen are labouring to connect with it. The view taken of the subject by the gentleman from Virginia is certainly the only correct one; let us first decide whether we will impart our constitutional agency to carry the treaty into operation, and when we consider ourselves as having acquired the territory and its inhabitants, proceed to legislate accordingly. I shall not deny, that presuming upon the good faith of the French government, and of course that we shall obtain the possession according to the law

of nations, we may immediately proceed to pass such laws as may be necessary in that event. But of this subject the president and ourselves have the same views.

He speaks of "ulterior provisions," and of "temporary provisions." With reference to these *provisions* alone, the gentleman from Connecticut moves his resolution, and on this subject alone wishes for information. The president says, "as permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country, as the case may require." And he tells us, that such information on the subject as he has been able to collect, shall be laid before us in a few days, or as soon as the subject shall be in a state for our consideration. I am willing to take him at his word, and when we arrive at such a stage of the business as to render that information desirable, if the president is forgetful of us, I shall be ready to call upon him for a fulfilment of his promise.

*Mr. Mitchell* withdrew his motion of postponement. He had made it, he said, to save time, but as the time he hoped to have saved was already consumed, he would wave it. The gentleman from Connecticut declares his disposition to carry the treaty into effect, by all necessary measures, without delay. To accommodate him, he would withdraw his motion.

*Mr. Griswold*, but for one idea thrown out, should not again ask the indulgence of the house. The gentleman from Virginia (*Mr. Randolph*) observes, that when we shall go into a committee of the whole, we shall have but one resolution before us, viz.

Resolved, that provision ought to be made for carrying into effect the treaty and conventions concluded at Paris, on the 13th April, 1803, between the United States of America and the French republic.

And that in debating on this resolution there will be no necessity for the documents, which it is the object of the resolution to obtain. There would be weight in this observation, but for the circumstance that it is com-

petent for any gentleman in committee to move any resolution connected with the subject. It was competent to move that this or that article should be carried into effect; for the provision of a military force to take possession of New-Orleans; for the appointment by the president of governor or judges. The gentleman has admitted that these documents may be useful when we go into the details of the subject; if so, they certainly will be useful when we shall be in committee of the whole. Besides, if it be proper to agree to the general resolution, it would be absurd to agree to it, unless previously satisfied that some laws are necessary. If the United States have no right to govern the province, it is absurd to say that it is expedient to make provision by law for governing it. And unless gentlemen can show this or that law to be necessary, we ought not to agree to the general proposition. The argument, therefore, of the gentleman from Virginia is entitled to no weight.

*Mr. Randolph* would not have trespassed further on the house, had he not been called upon personally, by the gentleman from Connecticut (*Mr. Goddard*). He was sorry, that whilst bearing testimony to the ingenuity of the gentleman's colleague (*Mr. Griswold*), he had been unable to include the gentleman himself in the description. On all other subjects, he should be ready to acknowledge the gentleman's ingenuity, but on this he must be excused from subscribing to the opinion of the gentleman from Vermont. Candour forbade it. He regretted that the gentleman from Connecticut had felt this exclusion so deeply; and had he forgotten it, *Mr. R.* would have endeavoured to conceal the impression which the gentleman's display had made upon him.

The gentleman asks, when did he, or his friends, evince a disposition to acquire territory west of the Mississippi. *Mr. R.* said he must have been misunderstood if his position had been taken with such latitude. But the gentleman immediately corrects himself, by asking when was a disposition for hostility with Spain manifested by any description of persons in that house. If his memory did not deceive him, gentleman had that day declared, that the interruption of the navigation of

the Mississippi justified warlike measures on our part. If then to acquire the navigation of the river, with the bare right of deposit, would have justified hostility, surely the acquisition of the island of New-Orleans, and both banks of the river, giving a perfect security to our navigation, and the entire uninterrupted controul of the river, would have justified an appeal to arms, unless the unlucky ingenuity of the gentleman from Connecticut would undertake to prove that a part was more than the whole; and that although the attaining of a qualified and precarious right to a given object furnished good cause of war; yet to acquire an unqualified and secure right to the same object would not justify hostility. Surely it is not meant to insinuate that all which was heard on this subject last winter was mere clamour, and that notwithstanding the war speeches of the day, war was never contemplated by those who delivered them. If then the obtaining of the free navigation of the Mississippi was good cause of war, surely the obtaining that which was essential to the unfettered exercise of this right (New-Orleans), which, in other words, is the right itself, would have justified hostility. But we have not only obtained the command of the mouth of the Mississippi, but of the Mobile, with its widely extended branches; and there is not now a single stream of note, rising within the United States, and falling into the Gulf of Mexico, which is not entirely our own, the Apalachicola excepted. To these acquisitions are added the extensive region west of the Mississippi, and north east of New-Mexico. If the possession of the mere right of deposit then, on the Island of New-Orleans, a part of this acquisition, would have justified hostility, is the importance of this part lessened by having the whole added to it?

The gentleman had complimented his learned friend from New-York (for so he must insist upon calling him), and had been liberal enough to include him also, on their very great learning. Mr. R. acknowledged himself altogether unworthy of the honour of this association, and lamented his inability to return the compliment, but at an expence of sincerity and truth, which

even the gentleman from Connecticut, he hoped, would be unwilling to require. This gentleman says that we must have seen the treaty of St. Idelfonso, because we have undertaken to say what it does not contain. This may be logic in some schools, but surely it does not deserve, in this house, so respectable an epithet. Might we not declare, without having seen it, that this treaty does not contain the declaration of American independence? It is insinuated that certain gentlemen possess avenues to information, which are closed to another description of members of that house. Although he did not mean to attempt to satisfy the jealous spirit, which had so frequently manifested itself in surmises of this sort, yet, Mr. R. said, he had access to no information, but such as it was in the power of every gentleman to obtain. Without having seen the treaty of St. Idelfonso, (although he had seen as much of it, he believed, as the executive, from whom gentlemen require a copy of the instrument, that is to say, the extract from it contained in our treaty with France), he would undertake to affirm, that it did not accurately define the limits of Louisiana, and the house would perceive that he hazarded little by this assertion. Being apprized that the boundaries of this country were not specially described in any previous convention, whether of a general nature, as the peace of 1783, the treaty of Paris, in 1763, of Aix la Chapelle, or any other general pacification of Europe, of an anterior date, up to the peace of Ryswick, in 1627, which was posterior to the settlement of the country by France, or in any particular convention between France and Spain, that of 1762 conveying Louisiana to this last power, the family compact, or any other known stipulation between the parties, he could not fail to know that unless the accurate description of the boundaries in question was contained in the treaty of St. Idelfonso, it must be sought for in documents of another sort. Now that article of this treaty, which describes the extent and limits of Louisiana, is contained in the treaty before us.

Here Mr. R. read the extract, and asked if it were possible that the treaty of St. Idelfonso could contain a

description of Louisiana by certain specific boundaries, when it was described by that treaty in such language. Had certain limits been agreed upon, would not the treaty have described those limits? Would it not have resorted to those rivers, high lands, parallels of latitude, or degrees of longitude, had such been laid down, instead of the definition which had been given—"such as it was possessed by France, such as it then was in the possession of Spain, and such as it ought to be in consequence of subsequent treaties?" The treaty between the United States and France, in describing the country ceded to us, having quoted the description of it contained in the treaty of St. Idelfonso, are we not warranted in concluding that the treaty of St. Idelfonso contains no other more definitive description of the country? Is not the inference irresistible, that had it contained such a definition, by that definition it would have been ceded to us? The gentleman from Connecticut would therefore perceive, that without any information, other than that which is accessible to every man, it was not difficult to ascertain the fact in question. As to the treaty of St. Idelfonso, he professed an entire ignorance of it, the extract in question excepted. He had always understood it to be a secret treaty. He left the house to judge how far, under these circumstances, he had erred in refusing his sanction to that character of ingenuity and learning with which, on this occasion, the gentleman had been complimented by the member from Vermont.

Gentlemen profess a wish to debate the merits of the treaty, and yet all their arguments go to show that it is an illusive bargain, a ruinous contract; and so far are applicable only to the question "ought the laws to be passed for carrying it into effect?" The gentleman from Connecticut (Mr. Goddard) relied much on a very singular argument, the future reclamation of this country by Spain. She may indeed truckle now to the will of the first consul, but hereafter she may be in a condition to assert her rights. He was at a loss to know in what language a minister of Spain would demand the possession of a country, occupied for years by the Unit-

ed States, under a solemn and public treaty with France, to which Spain shall have given her tacit acquiescence, against which she shall have entered no protest or remonstrance. He had not as much difficulty to conceive the answer which would be returned her by some millions of citizens of the United States, seated on and near the lands in question, in case her application carried any thing of hostility along with it.

Whilst he was up, and he would not have risen but for the satisfaction of the gentleman from Connecticut, he would notice an observation of his colleague (Mr. Griswold), that although on the mere abstract question whether the treaty ought to be carried into effect, information as to the mode of doing it not being necessary, yet as every gentleman would be free to move, in the committee of the whole, specific propositions, it was proper, to enable the house to judge of those propositions, that this information should be previously possessed by them. But surely the house may believe it expedient to pass those laws, without having any idea of the skeletons of the particular bills. When these specific propositions shall have been made, they will go to particular committees, who will obtain of the proper departments the necessary information; of these committees the gentleman and his friends will be members. So much of the treaty as touches the appropriations of money on our part will go of course to the financial committee, of which the gentleman has long and deservedly been a member. Other propositions will be submitted to other committees. If the bills which they present are, in the opinion of the gentlemen, inefficient, they will have it in their power to show it; to demonstrate the hostility of Spain, and bring forward other measures better calculated to secure the desired effect. Mr. Randolph apologized for long and repeated intrusion on the house, which the personal application of the gentleman from Connecticut had produced, and he hoped justified, and thanked them for their polite and patient attention.

*Mr. Nicholson* said he should vote for the first part of the resolution, as well as for that part which related

to the order by Spain for the delivery. Though it might not be in the power of the executive to show that the stipulations made by France had been complied with, yet it would be in their power to show an order for the delivery to the French, under the sign manual of his catholic majesty, and this would be conclusive evidence of the title of France.

*Mr. Elliot.* I must again ask the attention of the house to a very few observations. Whatever may be said of newspaper information, there are occasions when we must be governed by it, when we can obtain no other. I am very confident, and I believe that every member of this house believes, that the treaty of St. Idelfonso, of the first of October, 1800, between the first consul of the French republic and his catholic majesty, was a *secret treaty*. I believe it never has been published. If it has been, every editor of a newspaper in the United States, every person in the habit of reading, may be supposed to have access to it, equally with the president. There is the greatest probability, however, that neither the first consul nor his catholic majesty could at this day publish that treaty, without being guilty of a breach of faith; and that, if the president possesses it, it has been confidentially communicated to him. Whether it be a secret or a public treaty, we have no right to take it for granted, as contemplated by the resolution, that it is in the possession of the president, and we have no right to require it from him.

I am disposed to do perfect justice to the pure intentions, the candid views of the gentleman from Maryland (Mr. N.) in relation to this subject. He may be able to justify himself for voting in favour of that resolution, but I cannot. I conceive it would be highly improper.

The question was taken on agreeing to the *first* member on the resolution as follows:

*Resolved,* That the president of the United States be requested to cause to be laid before this house, a copy of the treaty between the French republic and Spain, of the 1st of October, 1800.

The house divided—ayes 59, noes 59. The speaker declaring himself in the affirmative, the motion was carried.

*Mr. Rodney* suggested an alteration in the second member of the resolution, so as to read “instrument,” instead of “deed.”

*Mr. Griswold* had no objection to the modification.

The second member, so modified, was read as follows :

“ Together with a copy of the instrument of cession from Spain, executed in pursuance of the same treaty, conveying Louisiana to France (if any such instrument exists).”

*Mr. Huger* confessed his impressions to be favourable to the treaty, though the arguments urged that day certainly possessed great weight. He was rather of opinion that no such instrument as that referred to in the resolution existed. But if it did exist, its publication would certainly be satisfactory to the people, and the house. He declared himself ready to vote for carrying the treaty into effect,

*Mr. Nicholson* did not know whether his remarks had been clearly understood. He did not know whether the document he alluded to could strictly be called the instrument of cession. He had drawn an amendment to this part of the resolution, which he would propose, if in order, to wit, to substitute “ or other instrument showing that the Spanish government had ordered the province of Louisiana to be delivered to France.”

The Speaker said the house having agreed to insert the word “instrument,” it was not in order to receive a substitute.

*Mr. Huger* moved to reconsider the vote of the house in favour of inserting the word “instrument.”

Motion lost. Ayes 24.

The question was then taken on the *second* member, as above stated, and lost—ayes 34.

The question was then taken on the third member, viz. “ also copies of such correspondence between the government of the United States and the government or

minister of Spain (if such correspondence has taken place) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States."

And lost—ayes 34.

The question was then taken on the last member of the motion and lost without a division, viz.

"Together with copies of such other documents as may be in the department of state, or any other department of this government, tending to ascertain whether the United States have in fact acquired any title to the province of Louisiana by the treaties with France, of the 30th of April, 1803.

The question recurring on the whole of the resolution, as amended.

*Mr. Nicholson* moved to amend the second member by adding to the end thereof, "together with a copy of any instrument in possession of the executive, showing that the Spanish government has ordered the province of Louisiana to be delivered to the commissary or other agent of the French government.

Agreed to—ayes 64.

The question was then taken by yeas and nays on the whole of the original motion, amended as follows:

"*Resolved*, That the president of the United States be requested to cause to be laid before the house, a copy of the treaty between the French republic and Spain, of the 1st October, 1800, together with a copy of any instrument in possession of the executive, showing that the Spanish government has ordered the province of Louisiana to be delivered to the commissary or other agent of the French government."

And lost—yeas 57—nays 59.

TUESDAY, OCTOBER 25.

The house went into committee of the whole,  
*Mr. Dawson* in the chair, on the resolutions for carrying the treaty into effect.

*Mr. Gaylord Griswold* said he had hoped that some gentleman in favour of the resolution under consideration would have risen to assign his reasons in favour of it. But no gentleman friendly to its adoption having risen, and feeling himself embarrassed, he would take the liberty of suggesting his doubts as to the propriety of the resolution. He hoped the committee would have the candour to believe, that in stating those doubts which hung upon his mind, his object was not to delay the progress of the measures contemplated, but to gain information.

In reflecting for a short time, during which the subject had been before him, he had not been able to pursue it in all its bearings, nor to solve all the difficulties it presented. He had first asked himself where was to be found the constitutional power of the government to incorporate the territory, with the inhabitants thereof, in the union of the United States, with the privileges of citizens of the United States. Is there any such power? And if there is, where is it lodged? In giving his opinion on the constitutional right of making treaties, he would say that it was vested in the president and senate, and that a treaty made by them on a subject constitutionally in their treaty-making power was valid, without the assent of this house. This house had to be sure the physical power of refusing the necessary means to carry treaties into effect; but this power was essentially different from that conferred by the constitution. But if the treaty-making power should be exceeded, if it should be undertaken to make it operate upon subjects not constitutionally vested, he had a right to say that it was his duty not to carry it into effect. Even should its provisions be highly beneficial, it was not less their constitutional duty to resist it. He would not undertake to say that his mind was perfectly fixed, but he

entertained doubts, serious doubts ; and he hoped gentlemen would candidly give them answers.

He found, in the third article of the treaty, that “ the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States ; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.” Here then is a compact between the French government and that of the United States, to admit to citizenship persons out of the jurisdiction of the United States as it now is, and to admit territory out of the United States to be incorporated into the union. He did not in the constitution find such a power vested in the president and senate. If such a power be not expressly vested, it must be reserved to the people. It was not consistent with the spirit of the constitution that territory other than that attached to the United States at the time of the adoption of the constitution should be admitted ; because at that time the persons who formed the constitution of the United States had a particular respect to the then existing territory. They carried their ideas to the time when there might be an extended population ; but they did not carry them forward to the time when an addition might be made to the union of a territory equal to the whole United States, which additional territory might overbalance the existing territory, and thereby the rights of the now citizens of the United States be swallowed up and lost. Such a measure could not be consistent either with the spirit or the genius of the government.

For these reasons, Mr. Griswold was of opinion, that no such power was delegated to any department of the government ; but if such power was delegated to any department, it must, in his opinion, be to the legislature, as he should afterwards notice. It was not consistent with the spirit of a republican government, that its territory should be exceedingly large ; for as you

extend your limits, you increase the difficulties arising from a want of that similarity of customs, habits, and manners, so essential for its support. It was certainly difficult to draw the precise line; but there was, notwithstanding, one beyond which we should not go.

But if the right of extending our territory be given by the constitution, its exercise is vested in the legislative branches of the government. In the third section of the fourth article of the constitution it is said, "New states may be admitted by *the congress* into this union." Congress may admit new states; but, according to my construction of this article, are confined to the territory belonging to the United States at the formation of the constitution; to the territory then within the United States. Existing territory, not within the limits of any particular states, may be incorporated in the union. He contended, therefore, that the power to incorporate new territory did not exist; and that, if it did exist, it belonged to the legislature, and not the executive, to incorporate it in the union. If this were the case, it was the duty of the house to resist the usurped power exercised by the executive.

There was another ground as to the constitutionality of the treaty; at least one which excited doubts in his mind, which he hoped gentlemen would take up and remove. In the seventh article of the treaty are these words:

"As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on: it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies; and the ships of Spain, coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted, during the space of twelve years, in the port of New-Orleans, and in all other legal ports of en-

try within the ceded territory, in the same manner as the ships of the United States, coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than that paid by the citizens of the United States."

This article gives to the ships of France and Spain the same right of entering the ports of the ceded territory with our own vessels; and it precludes the ships of all other nations from the same right. Now if, as gentlemen contend, the new ceded territory with the inhabitants should become incorporated with the United States, there will be ports of entry in the United States into which French and Spanish vessels may enter on terms different from those on which they may enter other ports of the United States. The inference was that here was a favour granted to the port of New-Orleans over other ports. This was against an important principle of the constitution. For in the ninth section of the first article, we find, "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." This treaty then becomes a law of the land; it has made a commercial regulation. It gives to the ports of the ceded territory a preference to any other ports. Because the produce of France and Spain can be carried cheaper to their ports than to any other. If the principle contended for by gentlemen in favour of the treaty is admitted, I think I see a fatal blow proposed against the constitution of the United States, by destroying the reciprocity of interest that unites at present the different members of the union. Perhaps I see wrong.

*Mr. Randolph* rose for the purpose of satisfying, so far as was in his power, the doubts expressed by the gentleman from New-York (*Mr. G. Griswold*). He had listened with great pleasure to the candid exposition which the gentleman had given of his objections, and from the temper which he had manifested, *Mr. R.* relied on being able to satisfy some of his scruples on this subject. The objections which have been urged to the motion before the committee, resolved themselves into

arguments against the constitutionality, and arguments against the expediency of the treaty proposed to be carried into effect. As it would be needless to repel objections of this last kind, unless those of the first description could be satisfactorily answered, he should first reply to the observations which had been made on the constitutional doctrine.

He understood the gentleman from New-York as denying that there existed in the United States, as such, a capacity to acquire territory : that by the constitution they were restricted to the limits which existed at the time of its adoption. If this position be correct, it undeniably follows that those limits must have been accurately defined and generally known, at the time when the government took effect. Either they have been particularly described in the constitutional compact, or are referred to as settled beyond dispute, and universally acknowledged. But this was not the fact, in either case. The constitution not only did not describe any particular boundary, beyond which the United States could not extend, but our boundary was unsettled on our north eastern, southern, and north western frontier, at the time of its adoption. But perhaps we shall be told, that, although our limits were in dispute with our English and Spanish neighbours, still there were certain boundaries, specified in the treaty of Paris, of 1783, which were the actual boundaries of the United States. It was, however, a well attested fact, one of which we possessed official information from the executive, that the limits assigned us, by that treaty, were incapable of being established. A line running west from the Lake of the Woods not touching the Mississippi at all : it followed that the United States were without limits, beyond the source of the Mississippi. It will not be denied that among the powers which the government possesses under the constitution, there exists that of settling disputes concerning our limits with the neighbouring nations. This power was not only necessary in relation to the disputed boundaries on the side of Canada and Florida, but was indispensable to a government over a country of indefinite extent. The existence of this power will

not be denied : it has been exercised in ascertaining our north eastern and southern frontier, and it involves in it the power of extending the limits of the confederacy. Let us suppose that the commissioners, under the treaty of London, had determined the river St. John, or St. Laurence, to be the *true* St. Croix. Would not that part of the provinces of New-Brunswick, or Quebec, which lies on this side of those rivers, at this time have been a part of the United States ? Suppose the northern boundary of Florida had been fixed, under the treaty of San Lorenzo, to extend from the Atlantic ocean to the Gulf, would not all the country north of this line and east of the Mississippi, (part of the very country conveyed by the treaty, lately negotiated, and which gentlemen conceived we could not constitutionally hold); would not that country, at this time, compose a part of the United States ? That the constitution should tie us down to particular limits, without expressing those limits ; that we should be restrained to the then boundaries of the United States, when it is in proof to the committee that no such bounds existed, or do now exist, was altogether incomprehensible and inadmissible. For if the constitution meant the practical limits of the United States, the extent of country which we then *possessed*, our recent acquisitions on the side of Canada and the Natchez, could not be defended. But, sir, said Mr. R. my position is not only maintainable by the reason of the constitution, but by the practice under it. Congress have expressed, in their own acts, a solemn recognition of the principle, that the United States, in their federative capacity, may acquire, and have acquired, territory. It will be recollected, that adverse claims once existed between the United States and the state of Georgia, in relation to a certain tract of country, between the northern boundary of the Spanish possessions, and what we contended was the southern limit of Georgia ; the United States asserting that the country in question was the property of the United States, in their confederate capacity, and the state of Georgia claiming it as hers. Although I have always advocated the claim of that state, it never was on the principle of an incapacity in the United States to

acquire territory, or any other which affects the question now before us. It is true, sir, we appointed commissioners to settle the matters in dispute, amicably, with Georgia. But, in the mean time, we assumed the jurisdiction, erected a government over the country, and thereby established the principle, that the United States, as such, could acquire territory; the country in question, as we contended, never having been included within the limits of any particular state, and being ceded to the confederacy by the treaty of 1783. But perhaps it may be answered, that this acquisition being made anterior to the date of the present constitution, cannot affect any limitation or restriction, which it may have provided in relation to this subject; and that to prove that the old confederation could acquire territory, is not to prove the same capacity in the present system of government. To this I reply, that the constitution contains no such expressed limitation, nor can any be fairly inferred from it: and that if the old confederation, a mere government of states, a loosely connected league, all of whose powers, with many more, are possessed by the present federal government; if this mere alliance of states could rightfully acquire territory in their allied capacity, much more is the existing government competent to make such an acquisition. To me the inference is irresistible.

But the gentleman does not rest himself on this ground alone. He does not embark his whole treasure in a single bottom. Granting that the United States are not destitute of capacity to acquire territory, he denies that this acquisition has been made in a regular way. Congress, says he, alone is competent to such an act. In this transaction he scents at a distance executive encroachment, and we are called upon to assert our rights, and to repel it. If any usurpation of the privileges of congress, or of this house, be made to appear, I pledge myself to that gentleman to join him in resisting it. But let us inquire into the fact. No gentleman will deny the right of the president to initiate business here, by message, recommending particular subjects to our attention. If the government of the United States

possess the constitutional power to acquire territory, from foreign states, the executive, as the organ by which we communicate with such states, must be the prime agent, in negotiating such an acquisition. Conceding, then, that the power of confirming his act, and annexing to the United States the territory thus acquired, ultimately rests with congress, where has been the invasion of the privileges of that body? Does not the president of the United States submit this subject to congress for their sanction? Does he not recognize the principle, which, I trust we will never give up, that no treaty is binding until we pass the laws for executing it? that the powers conferred by the constitution on congress, cannot be modified, or abridged, by any treaty whatever? that the subjects of which they have cognizance cannot be taken, in any way, out of their jurisdiction? In this procedure nothing is to be seen but a respect, on the part of the executive, for our rights; a recognition of a discretion on our part to accord, or refuse our sanction. Where then is the violation of our rights? As to the initiative, in a matter like this, it necessarily devolved on the executive.

The unconstitutionality of this treaty is attempted to be shown by the following quotation from that instrument. "No preference shall be given to the ports of one state over those of another state," &c. But by the seventh article of the treaty, French and Spanish vessels, laden with the produce of their respective countries, are, for twelve years, to be admitted into the ports of the ceded territory, on the same terms with our own vessels. In our other ports a discrimination is made between American and foreign bottoms. New-Orleans, therefore, will enjoy an exemption, which will enable her to trade to the French and Spanish colonies on terms more advantageous than other ports. She is, therefore, a favoured port, in contradiction to the express letter of the constitution. To me it appears that this argument has much more of ingenuity than of force in it; more of subtlety than of substance. Let us suppose that the treaty, instead of admitting French and Spanish vessels on the terms proposed, merely cove-

nanted to admit American vessels on equal terms with those of France and Spain. If we had acquired this right, divested of the country, it would have been considered, and justly, as an important privilege. Annex the territory to it, and you cannot accept it. You may indeed acquire either the commercial privilege or the territory, without violating the constitution, but take them both, and that instrument is infringed. But the gentleman will recollect that the discrimination between foreign bottoms and our own is a creature of the *law*, and not a provision of the constitution. If his construction be sound, it does not involve a necessary violation of the constitution, it only involves the necessity of repealing these discriminating duties on French and Spanish products, brought in their own bottoms, into other ports than those of the ceded territory. It would therefore become gentlemen to adduce this as a proof of the inexpediency, rather than of the unconstitutionality of the treaty. For however inexpedient it may be to repeal this discrimination, no one will contend that it is unconstitutional, and if the constitution or the law were to give way, no one would hesitate between them. But I regard this stipulation only as a part of the price of the territory. It was a condition which the party ceding had a right to require, and to which we had a right to assent. The right to acquire involved the right to give the equivalent demanded. Mr. Randolph said, that he expected to hear it said in the course of the debate, that the treaty in question might clash with the treaty of London in this particular. He would therefore take this opportunity of remarking, that the privilege granted to French and Spanish bottoms, being a part of the consideration for which we had obtained the country, and the court of London being officially apprized of the transaction, and acquiescing in the arrangement, it would ill become any member of that house to bring forward such an objection.

Another case may be adduced to illustrate this question of constitutionality. During the last session of congress, they had received information of the manifestation of a disposition on the part of the possessors of

this country to violate our right to the navigation of the Mississippi, as secured to us by existing treaties. There was no difference of opinion but as to the mode of asserting this right. On all hands it was agreed that we would never relinquish this great object. A certain portion of the legislature were disposed to resort immediately to violent measures. Another portion was of opinion that it was best to waive such measures, until amicable means of settling this difference had proved ineffectual. Let us suppose this to have been the case, that our negotiation, instead of its present happy issue, had terminated in a refusal of justice. I believe there would, in that event, have been but one sentiment in this house and in this nation. We should have appealed to arms, and if fortune had only been as impartial as our cause was just, we should have possessed ourselves at least of a part of the territory in question.—Did any one dream of denying our right to the forcible possession of New-Orleans, if necessary to secure the navigation of the Mississippi? Can a nation acquire by force that which she cannot acquire by treaty? Must not the eventual right to the country, possessed by conquest, be confirmed by treaty? And is it not idle to contend, that so long as we employ force we may occupy the country, but no longer—that we cannot retain it by convention? Is not this to convert the question, from a question of political right, to a question of physical power? Mr. Randolph said he was now done with the constitutional objections, and he would finish by saying something of the expediency of the measure.

The gentleman from New-York seems to dread this treaty as a death-blow to our commerce and carrying trade. What is the state of that trade now, in relation to the ceded country? But a short time ago, who would have asked more than to be put on an equal footing with the possessors of that country? We now have the sovereignty of it, and only stipulate that, for twelve years, France and Spain should be admitted, not on an equal footing with us, but that their vessels, laden with their own produce, not otherwise, should pay no higher duties than our own. At the expiration of that period,

we can give a decided preponderance to our own trade, by discriminating duties. Will the hardy and enterprising New-Englander shrink from a competition with France and Spain on these terms? Cannot the discriminating duties be still enforced by the existing regulations, in respect to imports from New-Orleans to other parts of the United States? So far from a clog on our commerce, does not this treaty unfetter the Mississippi trade, and give us a preference over all other nations, except in the case of French and Spanish vessels, laden with the produce of their respective countries, and there we are on a footing with them?

Mr. R. said, that he would not dilate upon the importance of the navigation of the Mississippi, which had been the theme of every tongue, which we now possessed unfettered by the equal claim of the nation holding the west bank, a fruitful source of quarrel, but he would call the attention of the committee to a report which had been made at the last session, and to which publicity had lately been given.

I am not surprised, Mr. Chairman, that in a performance so replete with information, a single error should be discovered, especially as it does not affect the soundness of its conclusion. As long ago as the year 1673, the inhabitants of the French province of Canada explored the country on the Mississippi. A few years afterwards, 1685, La Sale, with emigrants from old France, made a settlement on the Bay of St. Bernard; and at the close of the 17th century, previous to the existence of the Spanish colony of Pensacola, another French settlement was made by the governor D'Iberville, at Mobile, and on the Isle Dauphin, or Massacre, at the mouth of that bay. In 1712, a short time previous to the peace of Utrecht, Louis XIV described the extent of the colony of Louisiana, by the settlements, in his grant of its exclusive commerce to Crozat. Three years subsequent to this, the Spanish establishment at Pensacola was formed, as well as the settlement of the Adais, on the river Mexicana. After various conflicting efforts, on both sides, the bay and river Perdido was established, from the peace of 1719, as the boun-

dary between the French province of Louisiana on the one side, and the Spanish province of Florida on the other: this river being nearly equi-distant between Mobile and Pensacola. Near the close of the war between England and France, rendered memorable for the unexampled success with which it was conducted, by that unrivalled statesman, the great lord Chatham, Spain became a party, on the side of France. The loss of the Havannah, and other important dependencies, was the immediate consequence. In 1762, France, by a secret treaty, of contemporaneous date with the preliminary treaty of peace, relinquished Louisiana to Spain, as an indemnity for her losses, sustained by advocating the cause of France. By the definitive treaty of 1763, France ceded to England all that part of Louisiana which lies east of the Mississippi, except the Island of New-Orleans, the rest of the province to Spain. It is to be observed, that although France ostensibly ceded this country to England, virtually the cession was on the part of Spain; because France was no longer interested in the business, but as the friend of Spain, having previously relinquished the whole to her, and because, in 1783, *restitution* was made by England, not to France, but to Spain. England having acquired this portion of Louisiana, together with the Spanish province of Florida, annexed to the former that part of Florida which lies west of the Apalachicola, and east of the Perdido, thereby forming the province of West Florida. It is only in English geography, and during this period, from 1763 to 1783, that such a country as West Florida is known. For Spain having acquired both the Floridas in 1783, re-annexed to Louisiana the country west of the Perdido, subject to the governor of New-Orleans, and established the ancient boundaries of Florida; the country between the Perdido and Apalachicola being subject to the governor of St. Augustine. By the treaty of St. Idelfonso, Spain cedes to France “the province of Louisiana, with the same extent that it now has in the hands of Spain:” viz. to the Perdido—“and that it had when France possessed it”—to the Perdido—“and such as it should be after the treaties

subsequently entered into between Spain and other powers :” that is, saving to the United States the country given up by the treaty of San Lorenzo. We have succeeded to all the rights of France. If the navigation of the Mississippi alone were of sufficient importance to justify war, surely the possession of every drop of water which runs into it; the exclusion of European nations from its banks, who would have with us the same causes of quarrel, did we possess New-Orleans only, which we have had with the former possessors of that key of the river; the entire command of the Mobile and its widely extended branches, scarcely inferior in consequence to the Mississippi itself; watering the finest country, and affording the best navigation in the United States; surely these would be acknowledged to be inestimably valuable.

But it is dreaded that so widely extended a country cannot subsist under a republican government. If this dogma be indisputable, I fear we have already far exceeded the limits which visionary speculatists have supposed capable of free government. This argument, so far as it goes, would prove that instead of acquiring, we ought to divest ourselves of territory. If the extent of the republics of Greece or of Switzerland, of ancient or modern times, is to be our standard, we shall dwindle indeed. They have formed the basis of most theories on this subject. The acquisition of the country west of the Mississippi does not reduce us to the necessity of settling it now, or for a long time to come. It will tend to destroy the cause of Indian wars, whilst it may constitute the asylum of that brave and injured race of men.

Mr. R. concluded by apologizing for detaining the committee so long. He was sorry that he had been unable to compress his remarks into a smaller compass.

*Mr. Joseph Lewis* said, that on a question so important, it was proper that his vote should be accompanied by his reasons. With the gentleman from New-York (Mr. G. Griswold) he entertained doubts as the constitutionality of the treaty, and if those doubts should be removed, he should vote for carrying it into effect.—

The part of the treaty to which he referred, was in the seventh article, in the following words :

“ As it is reciprocally advantageous to the commerce of France and the United States, to encourage the communication of both nations, for a limited time, in the ceded territory, until general arrangements relative to the commerce of both nations may be agreed on : it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies ; and the ships of Spain, coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New-Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandize, or other or greater tonnage than that paid by the citizens of the United States.”

In opposition to this part of the treaty, he found in the constitution of the United States this declaration : “ No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another.”

It was on this point that he entertained doubts, which he wished might be removed. His honourable colleague (Mr. Randolph) had not removed them ; so far from removing, he had confirmed them.

Mr. Lewis was free to declare, that his only objections were as to the unconstitutionality of the treaty ; and should any gentleman remove them, he would not object to voting for carrying the treaty into operation ; but unless they were removed, he must vote against it.

*Mr. Randolph*, in explanation, said that he thought he had suggested that the preference referred to was a legal and not a constitutional difficulty.

*Mr. Lewis*. Still the gentleman has not removed my difficulty. Congress possess no power to give a commercial preference to one state over another ; and

if the ships of France and Spain are permitted to enter New-Orleans, on terms more advantageous than they are permitted to enter other ports of the United States, it is a palpable violation of the constitution.

The gentleman from Virginia has also told us, that this preference is to be considered as the price paid for the ceded territory. I am astonished at this observation. As I understand the treaty, we are to take possession of Louisiana, within three months from the ratification of the treaty; and as soon as taken into our possession, a specific sum is to be paid for it, on which it becomes our sole property. If then we give a great advantage to the port of New-Orleans, not enjoyed by other ports, I say such preference will be a palpable violation of the constitution. For it must be evident to every mind, that such a preference will operate against every state in the union. For if the ships of France and Spain are permitted to enter New-Orleans upon better terms than any other ports, they can afford to bring the productions of those countries into New-Orleans much cheaper than into any other ports of the United States. These are my only objections; if removed, I shall have no difficulties; but until they are removed, I must be opposed to the resolution before the committee.

*Mr. Griffin* said, that upon a subject so important, and so deeply interesting to his country, it would be unpardonable in him, and evince a dereliction of duty, to give a vote without assigning his reasons. On referring to the treaty and the constitution, and comparing the provisions, considerable apprehension had arisen in his mind, and he seriously feared the consequences of a collision between them. As he was only in search of truth, and as it was his sincere wish that all his apprehensions and doubts should be removed, he would take the liberty of stating his doubts on the constitutionality of the treaty.

In the seventh article of the treaty were these words (*quoting the words recited by the last speaker, as above-stated*). This was evidently a commercial regulation. If a commercial regulation, and such he deemed it, the

president and senate have undertaken to form commercial regulations for the ceded territory.

In the 8th section of the 1st article of the constitution, power is given to *congress* "to regulate commerce with foreign nations." Is not then this treaty stipulation, made by the president and senate, in direct contravention of this constitutional investiture of power in congress? The constitution says, "*congress* shall have power to regulate commerce with foreign nations." Who are congress? The senate and house of representatives. If then the president and senate make a treaty for the regulation of commerce, they infringe the constitution, by doing that which congress alone can do. Thus then have the president and senate, in their executive capacity, legislated, and thereby infringed the rights of this house, as a branch of the legislature.

In the seventh article of the treaty, we find, that "French ships, coming directly from France, or any of her colonies, loaded only with the produce and manufactures of France, or her said colonies, and the ships of Spain, coming directly from Spain, or any of her colonies, loaded only with the produce or manufactures of Spain, or her colonies, shall be admitted, during the space of twelve years, in the port of New-Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States, coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandize, or other or greater tonnage, than that paid by the citizens of the United States."

In the ninth section of the first article of the constitution, we find, "no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another." He was correct, he believed in stating, that, under the present regulations of trade, Spanish vessels pay 50 cents per ton, while American vessels paid only 6 cents. Here then the president and senate undertake to destroy this provision made by law. For according to the treaty, Spanish and French vessels, entering the port of New-Orleans, will hereafter

pay only 6 cents a ton, while similar vessels, coming to all the other ports of the United States will be obliged to pay 50 cents a ton. The difference between six and fifty constitutes the preference given to New-Orleans.

Feeling these doubts most forcibly, he could not consent to the resolution, until they were completely removed. He did not feel a disposition to discuss the merits of the treaty, or to go at large into the consequences which it might produce. He did, however, fear these consequences; he feared the effects of the vast extent of our empire; he feared the effects of the increased value of labour, the decrease in the value of lands, and the influence of climate upon our citizens who should migrate thither. He did fear, though this land was represented as flowing with milk and honey, that this Eden of the new world would prove a cemetery for the bodies of our citizens.

*Mr. Purviance.* I am clearly and decidedly in favour of the resolution on your table, premising the appropriations for carrying the treaty between France and this country into effect; and I sincerely regret that in doing so, I shall act adversely to the general sentiment of the gentlemen with whom it is my pleasure and my pride to confess I have hitherto politically associated.

It is true I am, and always have been opposed to the general tenor of the present administration. It has not appeared to me to possess that bold commanding aspect, that erect and resolute front, which ought to be assumed by the executive of a free people, when claiming satisfaction for a wrong sustained. It has not shown that strong, muscular, athletic shape, which is calculated to intimidate aggression, or which is enabled to resist it; nor do I think that it has manifested that firm, dignified, manly tone of virtue and of spirit, which, resting on the love of a free people, and conscious of their strength, can ask for the prompt, direct, and unequivocal satisfaction to which it is entitled, and, being denied, can take it. It has not appeared like the veteran chief, ready to gird his loins in defence of his country's rights; but, if I may be allowed to use the

*magna componere parvis*, it has, to my mind, somewhat resembled a militia subaltern, who, in time of war, directed his men not to fire on the enemy, lest the enemy might fire again.

Under such an administration, I have thought that it would be better to have the ceded territory on any terms, than not to have it at all. If we have not the spirit or the means of doing ourselves justice, would it not be better that we bribe those who might be in a situation to molest us, and thus put it out of their power to do us any injury which we cannot, or which we will not avenge. There are but two ways of maintaining our national independence—men and money; since we did not use the first, we must have recourse to the last. One of these two we should be compelled to resort to, if France gained possession of Louisiana, and we had better resort to it now. I deny that they have as yet gained possession; they have not received a delivery of the four redoubts which garrison and command the country, nor have they a single armed soldier there, except those which are particularly attached to the equipage of the colonial prefect. If, sir, we were obliged to resort to the necessity of purchasing their friendship after they had procured an establishment, it would not be confined to one instance of humiliation and acknowledgment on our part, or one instance of insult only on theirs. If we purchase their friendship once, we should be compelled to make annual contributions to their avarice, and be annually subjected to their insolence. Repeated concessions would only produce a repetition of injury, and at last, when we had completely compromised our national dignity, and offered up our last cent as an oblation to Gallic rapacity, we would then be farther from conciliation than ever. The spirit of universal domination, instead of being allayed by those measures which had been intended for its abatement, would rage with redoubled fury; elated by those sacrifices which had been intended to appease it, it would still grow more fierce; it would soon stride across the Mississippi, and every encroachment which conquest or cunning could effect might be expected;

the tomahawk of the savage and the knife of the negro would confederate in the league, and there would be no interval of peace, until we should either be able to drive them from their location altogether, or else offer up our sovereignty as an homage of our respect, and permit the name of our country to be blotted out of the list of nations for ever.

I confess there are many gentlemen of that nation for whom I entertain the sincerest esteem ; but although I love some of them as friends, they will pardon me when I say I do not like all of them as neighbours.—Blood, havoc, and devastation have, for some years past, encircled their proximity, and circumstances equally disastrous and equally improbable have already taken place. Do we want any evidences of this ? We can find them in Switzerland, in Italy, in Egypt, in Hanover, in France itself. We have seen the ancient throne of the Capets tumbled from its base ; we have seen the tide of succession, which had flowed on uninterruptedly for ages, dammed up for ever ; we have seen the sources of the life-blood royal drained dry. And by whom ? By the pert younglings of the day.

“ An eagle towering in his pride of flight  
Was by a mousing owl hawked and killed.”

We have afterwards seen these puny upstarts, when their hands had been reddened in the slaughter-pens of Paris, kicked from their seats, and a Corsican soldier embellished with the majesty of the Bourbons. We have seen one half of the old world subjected to his dominion, and the other half alarmed at his power. And is it thought, sir, that America alone, with an army scarcely sufficient to defend our garrisons, with a navy scarcely sufficient to punish a bashaw, with a treasury incommensurate to our engagements, and an executive unwilling to strain our energies : is it, I say, sir, for America alone, under these circumstances, singly to withstand that gigantic nation, which, fighting on her own ground, is fed from her own granaries, and furnished from her own arsenals ? The time once was, indeed, when we could have redressed our own wrongs, and had an opportunity of

doing so ; but that necessity and that opportunity, I take it, sir, have now both passed away.

Yes, thank God ! we have now a treaty, signed by themselves, in which they have voluntarily passed away the only means of annoyance which they possessed. But I do not thank the honourable gentleman who is at the head of our executive. At the time this negotiation was commenced, there could not be the smallest hope of its being carried into effect. The French consul had obtained it, perhaps, for the express purpose of carrying into effect his favourite scheme of universal domination : it might give him the chance of injuring the British, controuling the Spaniards, and dismembering America. Compared with these objects, a handful of bank stock was of no more consequence to him than a handful of sand. His fleet and army were ready to sail, and his colonial prefect had already arrived. But mark ! The king of Great Britain, who at this crisis I take to have been by far the most able negociator we had, declares war. The scene is now changed. That which France had refused to our intercession, she was now compelled to grant from mere necessity. A state of warfare took place about the last of March, and the treaty was signed soon afterwards. As long as I retain the small stock of understanding which it has pleased God to give me, I shall never be induced to believe, that it was owing in the smallest degree to the efficacy of diplomatic representation. The mind of that great man is not made of such soft materials as to receive an impress from the collision of every gentle hand. Stern, collected, and inflexible, he laughs to scorn the toying arts of persuasion. His soul is a stupendous rock, which the rushing of mighty waters cannot shake from its place. No, sir ; had it not been for this happy coincidence of circumstances, the personal solicitations of our ministers would have been regarded with as listless an ear as if they had been whispered across the ocean.

But, sir, whatever may have been the causes which produced this treaty ; whether it was owing to diplomatic agency, or to fortuitous incidents, its effects will certainly prevent an evil, if it does not produce a good. I

do not think that there will be any positive advantage resulting from the sale of unlocated lands, as has to-day been hinted; on this score we need not expect a reimbursement; there is no doubt but that all the valuable lands contained within the circumscriptions of the territory have already been granted by the courts of Spain and France to their own subjects; nor do I see any restrictive provision in the treaty which would prevent the latter from continuing to issue patents up to the very date of the ratification.

There may however be other advantages, or there may indeed be disadvantages, which, shrouded as I am in the gloom of uncertainty, and not possessing the intelligence which has been asked for and withheld, I am unable to discern. To gentlemen who have been pleased to prevent our procuring it these circumstances may be obvious, as they are more eminently situated, they perhaps command a larger and a clearer prospect. If then the claim which has been transferred should be invested with any latent embarrassment; if the court of Madrid has already signified an hostility to this treaty in consequence of the non-performance of the stipulations contained in that of St. Idelfonso, respecting the recognition of the late king of Etruria; if our possession should be opposed, or our right of property hereafter contested, let the president look to it. He only will become responsible for every drop of American blood which may be drawn in such a contest, as he ought to have communicated any information to this effect which he possessed, in order that our discretion might be regulated accordingly.

As no such obstacles have been made known to us by the president, I will suppose that none such do exist, and I will therefore vote for the treaty; and if even a larger sum was necessary for its effectuation I would not withhold my assent; for the same reason that a man would give an exorbitant price for a piece of land adjoining his own, in order to prevent the settlement of a disorderly neighbour, who he thought would plunder his property or burn his enclosures; and, if this was the *last* public act of my life, I would sink into the grave

under the pleasing impression that it was perhaps the best.

*Mr. Elliot.* Mr. Chairman, although, in the short time since I have had the honour of a seat on this floor, I have several times risen in debate, that circumstance scarcely diminishes my diffidence at the present moment; uneducated in the schools, and unpractised in the arts of parliamentary eloquence, it is with no inconsiderable degree of diffidence that I rise upon the present occasion. There are occasions, however, where even the eye of timidity should sparkle with confidence; and there are questions in the discussion of which the finger should be removed from the lip of silence herself. And such is every occasion and every question involving the existence, the infraction, or even the correct and just construction of that constitution, which is the palladium of our privileges, and the temple of our glory. If I might be permitted to borrow a metaphorical expression from one of the most celebrated commanders of antiquity, who declared that he intended to spread all his sails on the ocean of war, I would say that it is with fear and trembling I presume to launch my little feeble bark, on the vast ocean of eloquence and literature (*pointing to the federal members*) by which I am surrounded. If, however, the remark be just, that it is even sweet and glorious to die for one's country, surely the humbler sacrifice of native diffidence may with propriety be expected and exacted from a juvenile American representative.

Whatever minuter shades or minor differences of opinion may exist among the American people, there is one point in which we shall all meet with cordial unanimity. We all unite in an ardent devotion to the constitution. He who is not devoted to it is unworthy of the honourable name of an American. I lament that it is necessary to speak particularly of myself, but duty, not only to myself, but to my constituents, a numerous and respectable section of the American people, demands it. It may be objected to me, and with truth, that there has been a time when I professed sentiments hostile to some of the most important provisions in the con-

stitution. It was not, however, at the time when the constitution was submitted to the people. I was then in infancy and obscurity, deprived of the means and even of the hopes of education. I had yet read much and reflected more. My ardent and excursive eye had wandered rapidly over the wide field of ancient history. I thought I beheld my country, like the Roman republic in the age of Cato, the sport of every wind and of every wave. As far as I understood the constitution I admired it, and wished for its adoption. But when an elegant anonymous writer predicted, as the consequence of its adoption, that "liberty would be but a name, to adorn the short historic page of the halcyon days of America," I trembled and shuddered for the possible consequences. If, in the plenitude of *juvenile* self sufficiency (and who has not been young?), I have since fancied that I could form a more perfect constitution, that dream of the imagination has long been past. Long have I been sincerely and ardently attached to the constitution.

I foresee that I shall be led into a wide field, and that I shall long, *too long*, occupy the attention of the committee. Will the committee hear me? I imagine that I read a favourable answer in the countenances of all its members. I shall be interrupted by no unpleasant indications of impatience, by no loud calls for the question.

The treaty before us is of immense consequence, and my attention was early turned to the subject. From the moment of my election, I have devoted many studious and laborious hours to the subjects connected with it, and I have anticipated all the objections against it; none of those presented this day by the gentleman from New-York, who opened the debate, or by the gentlemen who followed him on the same side, have struck my mind as novel. The question of the constitutionality of the treaty first presents itself. It is said to be unconstitutional, because it enlarges the territory of the United States. To reduce the arguments of gentlemen on this head to a syllogistic form, they would not strike the mind with great force. The constitution is silent on the subject of the acquisition of territory; by the treaty we

acquire territory ; therefore the treaty is unconstitutional. It has been well remarked by an eminent civilian, that those are not the most correct and conclusive reasoners, who are very expert at their *quicquids*, their *atquis* and their *ergos* ; but those, who, from correct premises, by just reasoning, deduce correct conclusions. This question is not to be determined from a mere view of the constitution itself, although it may be considered as admitted that it does not prohibit, in express terms, the acquisition of territory. It is a rule of law, that in order to ascertain the import of a contract, the evident intention of the parties, at the time of forming it, is principally to be regarded. This rule will apply, as it respects the present question, to our constitution, of which it may be said, as the great Dr. Johnson said of the science of the law, that it is the last result of human wisdom acting upon human experience. The constitution is a compact between the American people for certain great objects expressed in the preamble (*Mr. E. here read the preamble*) in language to which eloquence and learning can add no force or weight. Previous to the formation of this constitution there existed certain principles of the law of nature and nations, consecrated by time and experience, in conformity to which this constitution was formed. The question before us, I have always believed, must be decided upon the law of nations alone ; and under this impression I have examined the works of the most celebrated authors on that subject.

I recollect a time, sir, when a foreign minister in this country, at a moment when genius, fancy, and ardent patriotism, were lords of the ascendant over learning, wisdom, and experience, spoke of the law of nations and its principles as mere worm-eaten authorities, and aphorisms of Vattel and others. I also recollect that the illustrious man, who is now president of the United States, was then secretary of state, and that he delivered the unanimous sentiments of the American people when, in his reply to that minister, he observed that something more than mere sarcasms of that kind was necessary to disprove those authorities and principles ; and that, until they were disproved, the American nation would hold it-

self bound by them. This is the man, sir, who has been so injuriously calumniated within these walls this morning, and upon whom such a torrent of bitter eloquence has been poured by the gentleman from North-Carolina (Mr. Purviance), a gentleman who is himself a model of eloquence, uniting all the excellencies of Cicero and Demosthenes, and all other orators, ancient and modern.

The American people, in forming their constitution, had an eye to that law of nations which is deducible by natural reason and established by common consent, to regulate the intercourse and concerns of nations. With a view to this law the treaty-making power was constituted, and by virtue of this law the government and the people of the United States, in common with all other nations, possess the power and right of making acquisitions of territory by conquest, cession, or purchase. Indeed the gentlemen who deny us the right of acquiring by purchase, would probably allow us to keep the territory, were it obtained by conquest.

Colonies, or provinces, are a part of the eminent domain of the nation possessing them, and of course are national property : colonial territory may be transferred from one nation to another by purchase ; this purchase can be effected by treaty alone, as nations do not, like individuals, execute deeds, and cause them to be recorded in public offices ; that department of the government of the nation purchasing, which possesses the treaty-making power generally, is competent to make treaties for that purpose. These positions are established by the laws of nations, and are applicable to the case before us. (*Here Mr. E. read a variety of extracts from Vattel to establish these positions, and observed that they were corroborated by Grotius, Puffendorf, and other eminent writers on the law of nature and nations, whose works he had consulted*).

A mere recapitulation, and that not a tedious one, of these principles and authorities, will now answer the present purpose. Colonies have always been considered as national property, although the law or practice of nations, in this instance, may not conform to the law of nature. Greece treated her colonies with peculiar in-

dulgence : Rome considered any privileges which her's were suffered to possess, as mere matters of grace, not of right. The one was a natural and tender parent, the other a cruel stepmother. Yet I have no recollection that the Grecian colonies in Asia Minor, Italy, or even at Ionia, were represented in the Amphyctionic council, the general assembly of the states of Greece. The claim of the British colonies, which now constitute the United States, to be represented in that body by which they were taxed, though just in itself, was novel and unwarranted by the practice of nations. Thank God the claim was successful, and in consequence of it, we are now here as the representatives of the American people, deliberating upon their most important interests. It is unnecessary to reiterate the other positions ; they are undeniable in themselves, and their applicability to the present case will hardly be disputed. If the treaty be extremely pernicious, or has not been made by sufficient authority, or has been made for unjust purposes, it is void by the law of nations.

Another ground of objection to the constitutionality of the treaty is taken. It is said that a clause of the constitution which forbids any preference, as to duties and privileges being given to the ports of one state over those of another, is irreconcilable with the seventh article of the treaty, by which " it is agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies ; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the ports of New-Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on the merchandize, or other or greater tonnage than that paid by the citizens of the United States." Let us again enquire with what views, and for what objects, the constitution was form-

ed. The articles of confederation were but a feeble band of union, the "shadow of a shade," to borrow a poetical expression, of a federal system. Several states, sovereign and independent with respect to many objects, united under a national government as it respected the most important national objects, and formed a federal system, novel in its nature, and unequalled in the annals of all ages and nations. The *states* as such were equal, and intended to preserve that equality; and the provision of the constitution alluded to, was calculated to prevent Congress from making any odious discriminations or distinctions between particular *states*. No preference shall given to the ports of one *state* over those of another *state*. It was not contemplated that this provision would have any application to *colonial* or *territorial* acquisitions. But it is said that the treaty obliges us to receive the inhabitants of the ceded territory into the union, and of course to form them into new states. By the treaty—"the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, *according to the principles of the federal constitution*, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." This stipulation of the treaty is of a novel, singular, and curious nature, but does not diminish my zeal to have it carried into effect. A complete discretion is left to the United States as to the time and manner of admission; and I have no idea that it will be necessary to admit them within the twelve years, during which France and Spain are to enjoy those privileges. The eloquent and honourable member from Virginia (Mr. R.) took a very different view of this subject, which of itself was perfectly satisfactory to my mind, and I could take still other views equally satisfactory. There can be no possible violation of the constitution.

The expediency of the treaty is another question, and an important one. I once hoped that the interests of our country would never require an extension of its limits, and I regret even that that necessity now exists. Evils and dangers may be apprehended from this source, and great evils and dangers may possibly result. But the

regions of possibility are illimitable ; those of probability are marked by certain well defined boundaries, obvious to all men of reason and reflection, and, in the language of the poet,

As broad and obvious to the passing clown,  
As to the lettered sage's curious eye.

If we cannot find, in the peculiar principles of our form of our government, and in the virtue and intelligence of our citizens, a sufficient security against the dangers from a widely extended territory, in vain shall we seek it elsewhere. There is no magical quality in a degree of latitude or longitude, a river or a mountain. And it has been well remarked that every danger from this quarter might have been apprehended before the acquisition of this territory. The Roman empire, or that of Alexander in the zenith of its glory, was scarcely capable of containing a greater population than the territory of the United States ; and men conversant with history do not wonder at the transient existence and rapid ruin of those empires. I repeat it, Mr. Chairman, we must look for our security in principles and circumstances inapplicable to the ancient nations. With the present question of expediency, I confess, sir, are naturally intermingled many considerations, infinitely interesting to the future peace, prosperity, felicity, and glory of our beloved country. The physical strength of a nation depends upon an aggregation of circumstances, amongst which, compactness of population, as well as territory, may be reckoned. Our population may become too scattered ; but this too is only a possible event. These possible evils ought not to be put in competition with the certain advantage, which we derive from the acquisition.

But a gentleman tells us that the administration hold out to us an Eden of the western world, a land flowing with milk and honey, while they have obtained nothing but a dreary and barren wilderness. Perhaps, if the gentleman be correct, the acquisition is scarcely the less important. To demonstrate the advantages of this purchase, it is not necessary to describe Louisiana as an

Elysian region, to describe it, as Homer does the Fortunate Islands, a region, on whose auspicious climate even winter smiles, where no bleak wind blows from its mountains, and no gale is felt but the zephyr, diffusing health and pleasure. But from geographical information, defective as it is, and from reasonable analogies, we may conclude that with the exception of some considerable tracts, it is a country, fertile and salubrious. Geography points us to China, Persia, India, Arabia Felix, and Japan, countries situated in corresponding latitudes, which, though always overshadowed by the horrid gloom of despotism, are always productive, and teaches us by analogy that Louisiana, in natural fertility, is probably equal to those beautiful oriental regions.

The gentleman from North-Carolina (Mr. Purviance) says he shall vote for carrying the treaty into effect, because the possession of the territory is important, and the administration not having, as it ought to have done, made use of *men* to obtain it, he will consent to make use of *money*. He has applied many curious epithets to the administration; he wishes for an administration, *athletic* and *muscular*, meaning, I suppose, like the wrestlers in the Grecian circus, or the gladiators in that of Rome. When I came within these walls, sir, I ardently hoped that the voice of party would be silent during the discussion of this subject, and I did not expect to hear the administration attacked in the language of vulgarity, malignity, and factious fury. When it is thus assailed, shall its defenders be silent? During the last session of congress, an extraordinary degree of agitation was produced in the public mind, by an egregious violation of our rights by an officer of the Spanish government. Neither the people nor the government were deficient in that *spirit* which the gentleman extols, but they were not governed by false ideas of national honour, and they were acquainted with the law of nations; they knew that we had no right to make the *denunciatio belli* precede the *repetitio rerum*, a declaration of war precede a demand of justice. Other epithets which the gentleman applies to his favourite administration I believe justly belong to the present one; *bold*, *firm*, *intrepid*, *manly*,

*virtuous, spirited*, it is owing to its wise and temperate conduct that we are not now engaged in the horrors of war, and it has erected an immortal monument to its own glory. Yet we hear of *malicious subaltern*, and the epithet *cowardly*—(Mr. Purviance here interrupted, and observed that he did not use those expressions.—Mr. Elliot proceeded). I wrote them down the moment the gentleman uttered them, and I could not understand them otherwise than as intended to have at least a remote application to the president of the United States; I hope the gentleman had no such intention. That we did not go to war, though peculiarly happy for our country, was probably unfortunate for that gentleman, as, in that event, he might have displayed, at the head of a triumphant army, those military talents which he undoubtedly possesses in an equal degree with his oratorical powers.

I must remark upon another extraordinary part of that extraordinary speech. Was it politic, was it prudent, was it just, at a moment when such an important negotiation between the French and American governments was closing, for a representative of the American people to labour to irritate the French, or any portion of our own people, by ardent declamation against what is called the unbounded ambition and rapacity of the French consul? That gentleman has told us, what his great predecessor, but not equal, in eloquence, Edmund Burke, told us long ago, that *the age of chivalry is gone*. But why turn our attention, at this moment, to Switzerland, to Italy, to Hanover, to the bloody scenes of revolutionary France herself? He deplores the fate of the royal Capets, devoted to destruction by the *pert younglings of a day*. If the French revolution has been unsuccessful, if the hopes of the friends of man and liberty have not been gratified, if the whole eastern world is still to groan under the iron hand of despotism, is it a subject of such deep regret, that a gleam of light has darted athwart the horrid gloom, that we have for a time anticipated, though we have failed to realise, the blessings of extended liberty? It is rather a subject of pleasure, and gratitude to Heaven. The first consul is styled a Corsican usurper.

I believe, sir, that there is not within these walls an admirer of the present government of France. But we all know the distinction between a king or government *de jure* and *de facto*. If Bonaparte be not the rightful ruler of the French republic, he is the actual possessor of the powers of government, and can bind the nation by treaties. If the Bonapartian shall have followed the Capetian race to the regions of the tomb, when the exchange of the ratifications of this treaty shall reach Paris, it will not be the less obligatory upon the French nation.

The gentleman to whom I have so often alluded denies all merit to the president and the American negotiators, and says that the king of Great-Britain was our only meritorious and successful negociator. Without attributing to the president the powers of prophécy, I must hazard the opinion, that, in common with all philosophic politicians, he foresaw that the peace between France and Great-Britain would not be permanent. The elements of war were mingled with those of peace.

[Mr. Sandford rose, and Mr. Elliot giving way, Mr. S. enquired of the chairman, whether any rule existed by which members, in committee of the whole, could be required to keep closely to the point in discussion. The chairman, Mr. Dawson, replied that it had not been customary, in committee, to confine gentlemen to narrow limits in their remarks.]

Mr. Elliot concluded as follows: I had determined, sir, on the first unequivocal manifestation of impatience, by any member, immediately to close my observations. I acknowledge that I have imperceptibly occupied more than my share of the valuable time of the committee. But I had not quite done with the gentleman from North-Carolina. I have paid him some compliments as an orator, perhaps more than were due to the merit of his oration, or the character of its author. I allude only to his political character; his private character, so far as I have information of it, I highly respect; but the political part which he has acted this day was to me so extraordinary and astonishing, that I could not restrain the expression of my feelings. To other gentlemen on his side of the house I look for *real* eloquence and ingenious

argument. And although the gentleman from Virginia (Mr. Randolph) from the display of his powers this day, may safely trust his fame as an orator to the impartial voice of history and posterity, in competition with any orator on the other side of the house, yet I am not without my fears, from former specimens of the talents of gentlemen in the opposition, that we shall one day be swept away in the overwhelming tide of their eloquence. The friends of the present administration can behold, with emotions only of pity, mixed with contempt, the innumerable little, muddy, murmuring rills of faction, folly, and slander, which, like spots upon the orb of day, are scattered upon the fair scenery of our far extended country: but they are compelled to listen, with a loftiness of feeling, bordering on sublimity, and not unmingled with terror, to the roaring of that tremendous torrent of opposition eloquence, which resounds within these walls, thunders around the capitol, terrifies the administration, and makes even the republican system itself tremble to its centre.

*Mr. Claiborne* urged the propriety of coming to an immediate decision, declaring his conviction of the constitutionality and expediency of the treaty.

*Mr. Thatcher* moved that the committee should rise.  
Motion lost, without a division.

*Mr. Sandford* did not rise to make a display of talents. Those who had confided to him the representation of their interests could have no such expectations as they had unfortunately selected a plain westerner. He was sorry to see so much time wasted, begged the house would recollect the time when it was necessary to pass laws for carrying the effect. Much has been said of a breach of constitution; but has any man shown it? The constitution does not prohibit the powers exercised on this, and not having prohibited them, they must be considered as possessed by government. In his opinion, necessary to carry the treaty into immediate effect. If done, other measures would require attention, which would afford an ample harvest for the talents and elo-

quence of gentlemen, with which, on any other occasion, he would be highly pleased.

*Mr. Thatcher* was sorry to be obliged at this late hour to state his reasons for voting against the resolution; but he should not discharge his duty to his constituents, were he to refrain from expressing his ideas. These reasons he should state as briefly as possible. This resolution is general, and contemplates two objects: it calls for the occupation and government of Louisiana, and for an appropriation of fifteen millions of dollars. He had hoped that on a question of such national importance they would have been allowed the papers necessary for its elucidation. But gentlemen have denied us this privilege. As the question, whether this treaty shall be carried into effect, is a great constitutional question, I shall in my remarks confine myself to the constitutional objections that lie against the treaty: two objections have been made, arising from the 3d and 7th articles of the treaty.

The 3d provides that "the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be secured and protected in the free enjoyment of their persons, property, and the religion which they

, said *Mr. Thatcher*, that the only sound objection is not that which has been stated by the gentleman from Kentucky (*Mr. Sandford*), that whatever is prohibited by the constitution is agreeable to the constitution; such powers as are not given are still held reserved for the people. No arguments have been offered to prove that the constitution delegates such powers to the gentleman from Vermont (*Mr. Elliot*) who has tired us with so long and so flowery a speech, who has sapped Vattel, and various other eminent authorities on the laws of nations, has proved that the United States have a right to make a treaty with France. But these authorities do not

apply unless he prove that the constitution gives the powers exercised in the present instance. The confederation, under which we now live, is a partnership of states, and it is not competent to it to admit a new partner but with the consent of all the partners. If such power exist, it does not reside in the president and senate. The constitution says new states may be admitted by congress. If this article of the constitution authorises the exercise of power under the treaty, it must reside with the legislature, and not with the president and senate.

The gentleman from Virginia says the principle contained in the 3d article of the treaty has been already recognized by congress, and has instanced our treaties with Spain and Great-Britain respecting the adjustment of our limits. By adverting to these treaties, it will be seen that there was then no pretence that we had acquired new territory. They only establish our lines agreeably to the treaty of peace. Certainly then the facts are not similar, and there exists no analogy of reasoning between the two cases. The gentleman from Virginia asks whether we could not purchase the right of deposit at New-Orleans? But the argument meant to be conveyed in this question does not apply. We had the right before this treaty was formed; nor did we, in consequence of that right, undertake to admit the people of New-Orleans into the union.

Gentlemen say we were for going to war during the last session, for the purpose of acquiring new territory. Mr. Thatcher knew the gentlemen, with whom he generally acted, asserted on that occasion the right of the United States to the deposit at New-Orleans, and were, in defence of that right, ready to go to war, if necessary. But he had never heard that it was intended to hold that right in perpetuity: he believed it was only contemplated to hold it as a pledge until our right should be restored and indemnity rendered for our injuries.

It is said that the preference given in the treaty to Spanish and French vessels is to be considered as part of the purchase money. But will gentlemen say it is part of the purchase money when it is applied as well to

Spanish as French vessels, though the purchase is altogether made of France? For these reasons it is that the gentleman from Virginia has not convinced my mind respecting the constitutionality of this power. If it is not expressly delegated, I must hold that it is still retained by the states or the people. I believe also that the power now contended for by gentlemen implies the power of alienating a part of the United States, and that we might as constitutionally alienate Massachusetts, and annex it to the British provinces; for these rights of annexation of new territory and alienation of old must go together; and I shall not be surprised hereafter, if this treaty shall go into effect, at Massachusetts or Vermont being annexed to the British provinces. Under colour of this power, a large portion of the union may be annexed to some European kingdom, so as totally to change the principles of our government.

So far as the provisions of this treaty affected the eastern states, it bore hard upon their interests. The constitution says, "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." Now if this territory shall be annexed to the United States, New-Orleans will have a decided preference over all the other ports of the union, inasmuch as the vessels of Spain and France entering that port will have to pay no higher duties than are demanded of our own vessels. The consequence will be, that the ships of Spain and France will come in, and supply not only New-Orleans, but all the country bordering on the Mississippi and the Ohio. What will be the consequence of this to the eastern states, which the gentleman from Virginia has so handsomely complimented? If they possess a spirit of enterprize, it ought to be encouraged. Instead of that, the effect of this treaty will be that they must bring their goods from Europe to their own ports, and then carry them to New-Orleans; by which freight and insurance will be greatly increased; and those charges will enable the French and Spanish vessels to monopolize the carrying trade.

But it is said, this is not a constitutional, but a legal provision. Now, if I can understand the obligations imposed by the constitution, every department of the government is bound by it. I conceive that the president and senate, in making treaties, as well as the legislature in making laws, are bound by it. However great gentlemen may imagine the benefits of this treaty, they do not affect the constitutional question. It was not, therefore, necessary to discuss the expediency of the measure, if unconstitutional; but as gentlemen had dressed these advantages in very alluring colours, it might not be improper to say, that if it went into effect it would carry from its present centre a great portion of the population of the United States, would probably remove the seat of government, and might dismember the union.

Mr. Thatcher was not disposed to discuss the causes which have produced the dismemberment of empires, though all history showed that great empires, whether monarchies or republics, had been ultimately broken to pieces by their magnitude.

This acquisition of distant territory, said Mr. Thatcher, will involve the necessity of a considerable standing army, so justly an object of terror. Do gentlemen flatter themselves that by purchasing Louisiana we are invulnerable? No, sir; Spain will still border on our southern frontier; and so long as Spain occupies that country, we are not secure from the attempts of another nation, more warlike and ambitious.

Under these impressions, it was impossible for him to vote for the resolution.

*Mr. Randolph* was sensible of the value of the time of the house, and would not, in the few remarks he should make, occupy five minutes. The gentleman from Massachusetts (Mr. Thatcher) had misapprehended and mis-stated what he had previously observed. He had not said that the constitutional question made by gentlemen was a mere legal injunction, which that house might get rid of; but he had said that the preference of our ships over foreign ships *was* a legal regulation; and that, therefore, those gentlemen, who were now so tender with regard to the constitution, might

have it in their power entirely to get rid of the constitutional difficulty, by taking off from the ships of Spain and France such duties as were higher than the duties paid by American vessels. When I say this, said Mr. R. I speak for them, and not for myself, nor shall I move to take off these heavy duties, as I do not feel the force of the constitutional objections urged by gentlemen. The article of the treaty, so often quoted, shows that no preference is given to one port over another. Yet by turning to our statute books, it will be perceived that at present there are some ports entitled to benefits which other ports do not enjoy; that they are set apart for particular objects, and particularly for the entry of articles brought from beyond the Cape of Good Hope. According, therefore, to the doctrine of this day, this is a violation of the constitution.

*Mr. Smilie* should not long detain the committee. He differed with gentlemen on the constitutional question, considering a right of annexing territory incidental to all governments. If he were correct in this opinion, such a power was vested in some department of government in the United States. That it was not vested in the states was clear, as they were expressly divested of the right. They were by the constitution expressly divested of the right of forming treaties and making war. It could then reside in the general government only. It was a position that could not be denied, that all societies possessed the right of self-protection. Let us then suppose that a nation, unjustly attacked by another nation, repels the hostility, and that the injured nation proves successful. Two things will result: the one, a right to indemnity for the injury received, and the expence incurred; and the other, a right to future security, by making such provisions as shall place it beyond the power of the aggressing nation in future time to repeat her injuries. If he was correct in these principles, and they were not disputed, the right of the United States to annex territory could be contested, if that measure were connected with her future security. The right indeed was common to all nations, admitted by all, denied by none.

Another constitutional difficulty had been started from the alleged obligation of the United States to incorporate this territory in the union. Mr. Smilie wished gentlemen to attend to that part of the treaty which related to this point, and their difficulties would be removed. The treaty says :

“ The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, *according to the principles of the federal constitution*, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States ; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.”

Now, where, said Mr. Smilie, is the difficulty ? We are obliged to admit the inhabitants *according to the principles of the constitution*. Suppose those principles forbid their admission ; then we are not obliged to admit them. This followed as an absolute consequence from the premises. There existed, however, a remedy for this case, if it should occur ; for if the prevailing opinion shall be that the inhabitants of the ceded territory cannot be admitted under the constitution as it now stands, the people of the United States can, if they see fit, apply a remedy, by amending the constitution so as to authorise their admission. And if they do not chuse to do this, the inhabitants may remain in a colonial state.

*Mr. Crowningshield.* Mr. Chairman, I rise, sir, to correct the gentleman from North-Carolina in one particular : he has stated that the first consul of France signed the treaty ceding Louisiana to the United States after the declaration of war by Great-Britain against France. I believe he is mistaken, sir, for the Louisiana treaties were signed the 30th April, and Great-Britain issued a declaration of war against France on the 17th May. If I am right, sir, the gentleman might have spared himself the trouble of detracting from the merits of the executive on this great occasion. Now I am up, sir, I beg leave to state to the committee some of the reasons why I shall give my vote in favour of these treaties.

A resolution is on the table, sir, which recommends that provision ought to be made to carry into effect the late treaties with France, which cede Louisiana to the United States. Feeling as I do that we have acquired this country at a cheap price, that it is a necessary barrier in the southern and western quarters of the union, that it offers immense advantages to us as an agricultural and commercial nation, I am highly in favour of the acquisition, and I shall most cordially give my vote in approbation of the resolution.

What, sir, shall we let slip this golden opportunity of acquiring New-Orleans and the whole of Louisiana for the trifling sum of fifteen millions of dollars, when one quarter part of the purchase money will be paid to our own citizens, and the remainder in public stock which we are not obliged to redeem under fifteen years? I trust, sir, we shall not omit to seize the only means now left to us of getting a peaceable possession of the finest country in the world. The bargain is a good one, and considering it merely in that light, we ought not to relinquish it. I have no doubt, sir, that the country acquired is richly worth fifty millions of dollars, and it is my opinion, sir, that we ought not to hesitate a moment in passing the resolution on the table.

A gentleman from New-York has stated doubts, respecting the privilege given in the 7th article to French and Spanish vessels coming directly from France and Spain, and their colonies, and loaded only with their produce and manufactures, to trade to ports in the ceded territory for twelve years upon the same terms as American or native ships coming directly from France and Spain. I have no objection, sir, to that article of the treaty, those vessels are to pay a tonnage duty, and a duty on their cargoes similar to our own, they are not to be admitted free of duty, but the United States reserve the right to make any regulations concerning the exportation of the produce and merchandize of our own country, which may be thought necessary.

Our trading ships can easily contend against those of France and Spain in the ports of Louisiana.

I should be very sorry, sir, that American vessels could not meet those of any other nation, in all situations and in every country, where they may be received on equal conditions as it respects the duties. We actually build cheaper, and can navigate cheaper than any other nation on the globe, and of course we run no risk in contending with other vessels in the open market, and I flatter myself we shall soon see all foreign vessels driven from those ports by an honourable competition with them.

It surely, sir, cannot be unconstitutional to receive the ships of France or Spain in the ports of the new territory, upon any terms whatever; it is a mere condition of the purchase, and this house may or may not agree to it; being a commercial regulation we have the power to give our assent or dissent to the article in question: for I take it to be correct doctrine, that this house, by the constitution, have the power to regulate commerce with foreign nations, as well as with the Indian tribes, and that whenever the president and senate make a treaty involving any commercial points, our consent is absolutely necessary to carry the treaty into effect.

By giving our assent we do not injure the rights of the other ports in the Atlantic states, as the privilege is extended only to ports in the ceded territory. I consider the eastern or carrying states as particularly and deeply interested in the acquisition of Louisiana; it is true their ships already visit almost every port, but under many restrictions, and I wish to see them sailing on the Mississippi without any molestation or restraint.

Sir, I am in favour of adopting these treaties, and they shall have my hearty support.

There is no superiority granted to foreign vessels trading to Louisiana, it merely places them on an equal footing with our own ships in those ports, for a limited time. The difference of duties is only ten per cent on the duty, and forty-four cents of tonnage, which difference of duties, I venture to say, have never given us but very trifling advantages in the intercourse of foreign nations with the United States.

We have now an opening for a free trade to New-Orleans and Louisiana, which we never had before, and

I hope we shall embrace it. Let us ratify the treaties with all their provisions, and we shall see in less than three years that we have gained the greatest advantages in our commerce. I wish we may immediately proceed to adopt the resolution before the committee.

*Mr. R. Griswold* called for the reading of two resolutions which had been referred to the committee of the whole, and after the same had been read, he observed, That the two resolutions which had been read from the chair, explained in some detail, the measures, with which the general resolution, for carrying into execution the treaties, was to be followed up. In deciding therefore, on the general resolution, it became necessary to keep in view the measures which were to result from it, that if we were not satisfied with these, we might give our votes accordingly.

The second resolution declares that it is expedient to provide by law for governing the ceded territory ; and if gentlemen are not prepared to do this, or to provide the stock contemplated by the first resolution, they cannot agree to the general proposition under immediate consideration.

Before entering, however, into a consideration of these points, I think it proper, said *Mr. G.* to say, that I have been one of those who have long felt the importance, to this country, of the free navigation of the Mississippi, and of a place of deposit at some place near the mouth of that river. I deem the enjoyment of that navigation and deposit indispensable to the prosperity of our western brethren ; and there are few sacrifices I would not cheerfully make, consistent with the constitution, to place those important privileges and rights beyond the reach of foreign controul. The opinion which I now express has been of long standing, and has not been weakened by any events which have recently taken place. So fully was I impressed, at the last session, with the importance of these claims, that I was persuaded, very vigorous measures ought to have been adopted, for vindicating and securing rights, which had been grossly violated. But whilst I again repeat, that the importance of our rights on the Mississippi has not been diminish-

ed in my view, it is necessary to declare, that I can never consent to secure this object, however desirable and important, by means, which shall set at defiance the constitution of my country.

It may not be improper, said Mr. G. in this place also to declare, that I have been one of those who have long believed that the power of making treaties belongs exclusively to the president, with the consent of the senate, and that a treaty, when constitutionally made and ratified, becomes a law, and must be executed accordingly. But it is essential to the existence of a treaty that it should be consistent with the constitution, in every respect, both as it regards the subject matter; and the form of ratification. If a treaty is repugnant to the constitution either in the matter of which it treats, or in the form of ratification, it cannot be considered, within the meaning of the constitution, a treaty. It is not within the words of the constitution, "made under the authority of the United States;" it is a dead letter, and void. If it shall then be found, that the instrument under consideration, contains stipulations which the constitution does not warrant, it will result, that it cannot be respected as a treaty; that congress, so far from being bound to carry it into execution, are obliged by their duty and their oaths, to support the constitution, and to refuse their assent to laws which go to infringe this great charter of our government.

Having made these preliminary remarks, and in some measure explained the general principles by which I shall consider it my duty to test the treaty, I will again call the attention of the committee to those parts of the instrument, which have been noticed by other gentlemen, and which have equally excited in my mind, doubts of its constitutionality.

The 3d article of the treaty is thus expressed.:

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be

maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

By this article it is declared, "that the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." It is perhaps somewhat difficult to ascertain the precise effect which it was intended to give the words, which have been used in this stipulation. It is however clear, that it was intended either to incorporate the inhabitants of the ceded territory into the union, by the treaty itself, or to pledge the faith of the nation, that such an incorporation should take place, within a reasonable time. It is proper therefore to consider the question with a reference to both constructions.

It is in my opinion scarcely possible for any gentleman on this floor, to advance an opinion, that the president and senate may add to the numbers of the union by treaty whenever they please, or in the words of this treaty may "incorporate in the union of the United States" a foreign nation, who from interest or ambition may wish to become a member of our government. Such a power would be directly repugnant to the original compact between the states, and a violation of the principles on which that compact was formed. It has been already well observed, that the union of the states was formed on the principle of a co-partnership, and it would be absurd to suppose, that the agents of the parties, who have been appointed to execute the business of the compact, in behalf of the principals, could admit a new partner, without the consent of the parties themselves. And yet, if the first construction is assumed, such must be the case under this constitution, and the president and senate may admit, at will, any foreign nation into this co-partnership without the consent of the states.

The government of this country is formed by a union of states, and the people have declared, that the consti-

tution was established “to form a more perfect union of the United States.” The United States here mentioned cannot be mistaken. They were the states then in existence, and such other new states as should be formed, within the then limits of the union, conformably to the provisions of the constitution. Every measure, therefore, which tends to infringe the perfect union of the states here described, is a violation of the first sentiment expressed in the constitution. The incorporation of a foreign nation into the union, so far from tending to preserve the union, is a direct inroad upon it; it destroys the perfect union contemplated between the original parties, by interposing an alien and a stranger to share the powers of government with them.

The government of the United States was not formed for the purpose of distributing its principles and advantages to foreign nations. It was formed with the sole view of securing those blessings to ourselves and our posterity. It follows from these principles, that no power can reside in any public functionary to contract any engagement, or to pursue any measure which shall change the union of the states. Nor was it necessary that any restrictive clause should have been inserted in the constitution, to restrain the public agents from exercising these extraordinary powers; because the restriction grows out of the nature of the government. The president, with the advice of the senate, has undoubtedly the right to form treaties, but in exercising these powers he cannot barter away the constitution, or the rights of particular states. It is easy to conceive that it must have been considered very important, by the original parties to the constitution, that the limits of the United States should not be extended. The government having been formed by a union of states, it is supposeable that the fear of an undue or preponderating influence, in certain parts of this union, must have had great weight in the minds of those, who might apprehend that such an influence would ultimately injure the interests of the states to which they belonged: and although they might consent to become parties to the union, as it was then formed, it is highly probable they never would have consented to such a con-

nexion, if a new world was to be thrown into the scale, to weigh down the influence which they might otherwise possess in the national councils.

From this view of the subject, I have been persuaded that the framers of the constitution never intended that a power should reside in the president and senate to form a treaty, by which a foreign nation and people shall be incorporated into the union, and that this treaty, so far as it stipulates for such an incorporation, is void.

But it has been said, that the treaty does not in fact incorporate the people of the ceded country into the union, but stipulates that they shall be incorporated, and admitted, according to the principles of the federal constitution. Or in other words, the treaty only pledges the faith of the nation that such an incorporation shall take place. On this point, I will observe, that there is no difference in principle, between a direct incorporation by the words of a treaty, and a stipulation, that an incorporation shall take place; because if the faith of the nation is pledged in the latter case, the incorporation must take place, and it is of no consequence, whether the treaty gives the incorporation, or produces the law which gives it; in both cases, the treaty produces the effect: and the question still returns, does there exist under the constitution, a power to incorporate into the union, by a treaty or by a law, a foreign nation or people? If it shall be admitted, that no such power exists, without an amendment to the constitution, and it shall be said, that the treaty-making power may stipulate for such an amendment, it will be a sufficient answer to say, that no power can reside in any of the national authorities to stipulate with a foreign nation for an amendment to the constitution. The constituted authorities of our union have been created, to execute the constitution, not to change, or stipulate for changing it, and they can, in no case, lay the states under the smallest obligation to make the smallest change. Stipulations therefore, of this nature, which create no obligation, are void.

Again, it cannot be said, that the stipulations for this incorporation are constitutional and valid, because it is declared, that the inhabitants of the ceded territory are

to be admitted to the right of citizens, according to the principles of the constitution; because if, as has been contended, there is no principle in the existing constitution, by which they can be incorporated, the stipulation and treaty is not only void, but absurd.

A gentleman from Pennsylvania, however (Mr. Smilie), has said, that it is competent for this government to obtain a new territory by conquest, and if a new territory can be obtained by conquest, he infers, that it can be procured in the manner provided by the treaty. Whilst I admit the premises of the gentleman from Pennsylvania, I deny his conclusion. A new territory and new subjects may undoubtedly be obtained both by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the union. They must remain in the condition of colonies, and be governed accordingly. The objection to the third article is not, that the province of Louisiana could not have been purchased, but that neither this, nor any other foreign nation, can be incorporated into the union by treaty, or by a law, and as this country has been ceded to the United States only under the condition of an incorporation, it results, that if the condition is unconstitutional or impossible, the cession itself falls to the ground.

Although I am unwilling to detain the committee at this late hour, and wish not to delay the wishes of the majority, yet I must be permitted again to refer the committee to the 7th article of the treaty. This article declares that the ships of France and Spain, together with their cargoes, being the produce or manufacture of those countries, shall be admitted into the ports of the ceded territory on the same terms, in regard to duties, with American ships. It is certainly worth the consideration of the committee, whether this article is consistent with the provisions of the constitution. As our laws now stand, the ships of France and Spain are liable to an extra tonnage duty, and their cargoes to a duty of ten per cent advance, when arriving in the Atlantic ports. The treaty declares that in the ports of the ceded territory, this extra duty of impost and tonnage shall cease.

The treaty does not, and probably cannot repeal the law, which lays this extra duty in the Atlantic States, but those duties must still be collected. The constitution, however, declares, in the eighth section of the first article, that "all duties, imposts, and excises shall be uniform throughout the United States," and in the ninth section of the same article it is said, that "no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another." By the treaty, however, the uniformity of duties is destroyed, and by this regulation of commerce contained in the treaty, a preference is certainly given to the ports of the ceded territory over those of the other states.—Gentlemen who advocate the constitutionality of the treaty will scarcely say, that the ceded territory is no part of the United States, and not embraced by the provisions of the constitution, because such an assertion, whilst it avoided one difficulty, would plunge them into another, equally fatal, and prove that the third article is void, and of course that the cession itself is a nullity.

The gentleman from Virginia (Mr. Randolph) has said that the discriminating duties of impost and tonnage are not a constitutional, but a statute regulation. This is undoubtedly true, but it must be recollected, that the statutes are in force, and so long as they remain unrepealed, the preference is given to the ports on the Mississippi, and the uniformity of duties is violated, and it cannot, most assuredly, be correct, to violate a principle of the constitution for a day, under the expectation of curing the violation by a legislative interference. If, however, it is really intended in this side-way manner to bring about a repeal of the discriminating duties, I hope it may at this time be so understood. The commerce of this country, and particularly that of the northern states, has long flourished under these protecting duties, and it would be extraordinary indeed if a treaty should be formed, laying the government under an obligation to repeal laws, so essential to our commercial prosperity.

Before I dismiss this part of the subject, it may not be improper to consider some points which have been

started by a gentleman from Massachusetts (Mr. Crowningshield) in regard to the effect which the seventh article of the treaty must produce upon the commerce of the eastern states. The remarks which I shall submit upon these points, will apply only to the policy of the stipulation; but they may have some effect on those gentlemen who feel themselves at liberty to decide at large on the merits of the treaty, and they appear to me to be necessary, in reply to the gentleman from Massachusetts, to whose opinions I cannot subscribe. It has appeared to me, that the stipulation in the seventh article must be highly injurious to the trade of the eastern states. The ships of France and Spain are to be admitted into New-Orleans, on the same terms with our own ships. The discriminating duty therefore in respect to them, in that port, is virtually repealed. But we obtain no repeal of the countervailing duties in French and Spanish ports. The consequence must be, that whilst we are labouring under all the embarrassments of extra duties in their ports, they are liberated from every embarrassment in ours. The effect is easy to be seen; the whole trade from the mouth of the Mississippi to the French and Spanish colonies, and probably to their European possessions, must ultimately be carried on in French and Spanish bottoms to the entire exclusion of American ships. Nor will the injury stop here; both France and Spain will doubtless prefer procuring their supplies from the United States in their own ships, and whilst they hold the monopoly of the trade to the mouth of the Mississippi, they will be able to draw from that point an abundant supply of flour and other articles of produce, to the great prejudice, if not to the ruin, of the trade from the Atlantic ports to the French and Spanish colonies. How gentlemen under such circumstances can consider the interests of the eastern states uninjured, is to me inexplicable.

Without detaining the committee longer upon this subject, I will only observe, that it is my wish that every doubt touching the constitutionality of the treaty may be removed. I do not personally feel any peculiar hostility to it. The importance of the navigation of the

Mississippi, and a place of deposit at the mouth of it, has long convinced me of the necessity of adopting measures to place those objects beyond all future hazard. At the same time I must be permitted to say, that I have not viewed the advantages from possessing the country on the west of the river, as some gentlemen appear to have considered them. This object was much considered during the last session of congress: but it will not be found either in the report of the secret committee, which has recently been published, or in any document, or debate, that any individual entertained the least wish to obtain the province of Louisiana, our views were then confined to New-Orleans and the Floridas, and, in my judgment, it would have been happy for this country, if they were still confined within those limits. The vast and unmanageable extent which the accession of Louisiana will give to the United States; the consequent dispersion of our population, and the destruction of that balance which it is so important to maintain between the eastern and the western states, threatens, at no very distant day, the subversion of our union. For these reasons, and many others which I will not detain the committee to detail, I have doubted the policy of the treaty itself, when taken altogether, but the only points on which I feel myself at liberty to decide, are those which have been before explained, respecting the constitutionality of the treaty, and until the doubts on these points are cleared up, I shall be compelled to vote against the resolution for carrying the treaty into execution.

*Mr. Nicholson* apologised for rising at so late an hour, and begged the indulgence of the committee for a short time. He said he would endeavour to pursue the laudable example held out by the gentleman from Connecticut, who had just sat down (*Mr. R. Griswold*), by compressing his observations into as small a compass as possible. He should therefore necessarily be compelled to pass over the immense advantages which would be derived to the United States from the acquisition of territory made by the treaty with France; nor indeed did he consider it a subject that required to be dwelt

on in this house, as the attention of the public had been drawn to it for some months past, and he believed nothing new could now be added to the volumes which had been already written and circulated in the daily prints.

Gentlemen had noticed a report of a committee during the last session, of which he had the honour to be the chairman, and had endeavoured to question the value of the acquired territory, because that report had only contemplated the acquisition of New-Orleans and the Floridas. It was certainly true that the committee, in viewing this subject, had confined themselves to the immediate cause of complaint, and as the right of deposit had been suspended at New-Orleans, their great object was to have this restored as speedily as possible, and to recommend such measures as would prevent a similar suspension at a future day. An enquiry of this kind naturally led to a view of the situation of the western country generally, and it was readily perceived that the same inconveniencies which had occurred in relation to the mouth of the Mississippi, might, at some future period, perhaps not very distant, embarrass the commerce of the whole Mississippi territory, the western parts of Georgia, and the eastern parts of Tennessee. It was seen that the produce of this valuable country must be carried to sea, by means of the great rivers which rise in the Mississippi territory, but pass through East and West Florida before they reach the Gulph of Mexico; and the committee were of opinion that these ought if possible to be secured by treaty. As one of the committee he was free to declare, that he did not at that time entertain the most distant idea, that the almost boundless tract of country lying west of the Mississippi, could be obtained by our government on any terms, much less for the comparatively inconsiderable sum which we had agreed to pay for it. Had he then offered an opinion on the subject, he should have had no hesitation to say, that the west bank of the Mississippi was almost incalculable in its value to the United States, if it was only for the purpose of preventing any foreign nation from colonizing it. If that

country were thickly settled by a foreign nation, the whole river Mississippi from its source to the sea, must have been guarded by a strong chain of military posts ; whereas the wilderness itself will now present an almost insurmountable barrier to any nation that may be inclined to disturb us in that quarter. The opportunity of acquiring this country, together with the island of New-Orleans, had presented itself to our executive, and they had most wisely resolved to embrace it. The error which had been spoken of in the report, was in fact no error. The committee intended to offer a geographical and not an historical view of the subject. Their object was to describe the country lying between our southern boundary and the Gulph of Mexico, and they adopted such names as were used by modern geographers, without undertaking to settle a dispute as to the ancient boundaries of Louisiana. The gentleman from Virginia (Mr. Randolph) had very accurately detailed the various changes that territory had undergone, and had correctly stated, that it was divided into East and West Florida after the peace of 1763, while in possession of Great-Britain. If we should be able to fix the eastern boundary of Louisiana at the river Perdido, there was no doubt that the value of our purchase would be considerably enhanced, as by that means we should certainly secure the whole of the Mobile bay, and the mouths of some other large rivers. Mr. N. said, however, he did not mean to go into a consideration of the numberless advantages derived to us by the acquisition of Louisiana, nor would he at that very late hour have trespassed on the time of the committee, but for the constitutional doubts which had been expressed by gentlemen on the other side of the house.

These constitutional difficulties, he said, appeared to him to be entirely separate and distinct, though gentlemen had very ingeniously blended them and had considered them as one. Whether the United States, as a sovereign and independent empire, had a right to acquire territory was one question, but whether they could admit that territory into the union, upon an equal footing with the other states, was a question of a very different nature. Upon this latter point he meant to offer no

opinion, because he did not consider it before the house ; when the subject should come properly into discussion should have no objection not only to enter at large into the constitutional authority to admit the newly acquired territory into the union as a state, but likewise to enquire whether this was really the spirit and intention of the 3d article of the treaty. The question now before the committee was, is it expedient to carry this treaty into effect ? and to be sure if gentlemen were of opinion that this government had no authority to acquire territory, the treaty ought to be rejected, because we should gain nothing by it.

But, sir, said Mr. N. had I been asked any where but in this house, whether a sovereign nation had a right to acquire new territory, I should have thought the question an absurd one. It appears to me too plain and undeniable to admit of demonstration. Is it necessary to resort to ancient authorities to establish a position which is proved by the conduct pursued by all nations from the earliest periods of the world, and which arises from the very nature of society ? Can it be doubted that when a state is attacked it has a right to assail its enemy in turn, and weaken the aggressor by dispossessing him of a part of his territory ? Surely the opinions of all writers both ancient and modern, and the examples of all nations in all ages, can leave no room for doubt on this subject. But, sir, on this, as on most other occasions, we are told that the constitution stares us in the face, and that this treaty cannot be carried into effect without violating the constitution. If indeed this sacred instrument forbids the acquisition of territory by the United States, I will most readily admit, that we ought to stop here.

Let the constitution, however, be examined ; let the principles on which it was formed be taken into view, and it will be found that instead of forbidding, the constitution recognizes the authority to acquire territory. In the year 1776, when the United States absolved their allegiance to Great-Britain, each state became a separate and independent sovereignty. As independent sovereignties they had full power, in the language of the declaration of independence, “ to levy war, to conclude

peace, contract alliances, establish commerce, and to do all other acts and things which independent states might of right do." Each state, separately and for itself, had all the attributes of sovereignty, and no man can be hardy enough to deny that at that time, any of the respective states had the capacity to extend its limits either by conquest or by purchase. These are the only two methods indeed by which territory may be acquired, and there have been very few wars in which the subjects of one nation or another have not been compelled to change masters. In the year 1781 the articles of confederation were finally agreed to, and each state surrendered a portion of its sovereignty for the common benefit of the whole. Much was reserved, but much was given up. The management of external concerns was given to congress, and congress alone had the power to levy war, conclude peace, and contract alliances. The capacity of the individual states to acquire new territory no longer remained to them. It was surrendered to the general government with the powers of war and peace. In the year 1788 the states again returned, as it were, to their original independency. Their sovereignty was once more assumed. They deliberated about the means of a more permanent union, to secure to themselves and their posterity all the blessings of liberty. The present constitution was adopted, and even a larger portion of individual sovereignty was surrendered. The right to declare war was given to congress, the right to make treaties to the president and senate. Conquest and purchase alone are the means by which nations acquire territory. The one can only be effected by war, the other by treaty; and when the states divested themselves of these powers, and gave them to the general government, they gave at the same time that right to acquire territory which they themselves originally had. The right must exist some where. It is essential to independent sovereignty. The 10th section of the 1st article of the constitution expressly prohibits the states from entering into treaties or levying war, and even from forming any compact or agreement with another state or a foreign power without the consent of congress. All the rights which

the states originally enjoyed, are either reserved to the states, or are vested in the general government. If they once had the power individually to acquire territory, and this is now prohibited to them by the constitution, it follows of course that the power is vested in the United States.

The gentleman from Connecticut (Mr. R. Griswold) admits that during the last session he was an advocate for very vigorous measures. By vigorous measures he means war. Will he deny that it was his wish to seize upon New-Orleans by force? will he deny that this, and this alone, was the reason why his friends and himself did not unite with us in the measures then adopted for the purpose of acquiring this country? If the gentleman's object was war, if his object was conquest, did he mean that we should drive all the inhabitants of the island into the Gulph of Mexico, and afterwards retire into our own limits? did he wish that we should fight for the sake of conquest only, and not with a view to enjoyment? If he then thought that after conquering New-Orleans we should have a right to hold it, surely it will not now be denied that we can hold it, after having obtained it by peaceable measures.

The gentleman seems, however, partly to have abandoned this ground, but in his opinion the treaty itself violates the constitution. With that gentleman I am unwilling to set the constitution at defiance. I trust we shall maintain it in all its vigour. The 3d article of the treaty, he says, either admits the ceded territory into the union immediately, or pledges us to do it hereafter. It cannot be contended that the territory is *ipso facto* admitted, but the objection is, that the president and senate have no right to pledge the government for any thing not immediately within their own powers. This objection is not solid. Every day's practice proves that it is without any force whatever. The president and the senate have the treaty-making power vested in them, but almost all their treaties contain stipulations, which must be performed by this house, if they are ever performed at all. In our last convention with Great-Britain, the president and senate pledged the United States to the

payment of six hundred thousand pounds sterling, yet the payment of this money was not within the powers granted to them by the constitution, nor could it ever have been paid without the concurrence of this house. It was never doubted, however, that this stipulation was constitutional. The present treaty with France pledges the United States to the payment of fifteen millions of dollars, yet gentlemen do not question the constitutionality of this measure, although it never can be carried into effect without the co-operation of this house. In fact there is no treaty made with a foreign power in which some of the regulations must not lie entirely inactive, unless this house shall give its assent to them. So in the present instance the fifteen millions of dollars can never be paid, nor the ceded territory admitted into the union, unless this house shall give its assent.

It is said, however, that congress cannot, under the constitution, admit foreign territory into the union upon an equal footing with the states, even under that article of the constitution which provides that new states may be admitted. I have before said, that upon this point I mean to offer no opinion, because at this time I think it unnecessary, nor need we now enquire whether this is in reality the meaning of the treaty. The gentleman from Connecticut, however, assuming this ground, contends, that as the treaty embraces objects not in the power of the general government, the whole is of course invalid. There may be some plausibility in this argument, but it is plausibility only. It has been already proved that the treaty-making power frequently and of necessity embraces objects not in the power of the president and senate, but of the whole legislature, yet that this does not of course invalidate the treaty. It may be shown, that where a treaty contains stipulations which are not in the power of the general government, and of course cannot be carried into effect, yet that this does not invalidate the whole, although these particular stipulations may of themselves be void. An instrument might sometimes contain covenants which were *impossible*, or that were *mala in se*; these of course would be void, but others might nevertheless stand good. I take a distinction which I am warranted in by the best wri-

ters, between articles of a treaty which are violated by one party, and articles which from the nature of things, or from previous engagements, are void. Where one party violates an article in a treaty, the other has a right to declare the whole void, because the violation is a breach of faith, and is a voluntary act. But where some of the stipulations of a treaty are impossible to be performed, or cannot be fulfilled consistently with the engagements of an antecedent treaty with a third power, these are of course void, but other parts will stand good. A variety of cases might be cited to prove this, but a very strong one will be found in our treaty of peace with Great-Britain, concluded in 1783. The fourth article of that treaty provided that creditors on either side should meet with no lawful impediment to the recovery of debts *bona fide* contracted previous to the war. This was a stipulation which congress could not perform. In all matters relating to the recovery of debts, the individual states retained entire and uncontrouled authority. The objects embraced by this article were completely out of the power of congress. The right to make treaties had been committed by the articles of confederacy to the general government, but in this particular the assent of the states was absolutely necessary, before that part of the treaty could be carried into effect. Great-Britain remonstrated repeatedly, but some of the states, particularly Virginia, refused to concur. Congress recommended it to the states to declare the treaty the supreme law, but the recommendation was not attended to. That article of the treaty was of course invalid, and never was fulfilled on the part of the United States. Yet it is certain that the whole treaty was not thereby rendered a nullity. Our independence was acknowledged. Hostilities ceased, and the British armies were withdrawn. The cases are extremely analogous, and if it should finally be determined that congress cannot admit the ceded territory into the union as a state, yet the other parts of the treaty will stand good. If this was the intention of our ministers, which perhaps may be doubted, they seem to have guarded against the event of a refusal, either by congress or by the people.

For it is declared expressly, that until the inhabitants can be incorporated into the union, and can be admitted to all the privileges of citizenship, they shall be protected in the enjoyment of their civil and religious rights.

The other constitutional objection is raised upon the seventh article of the treaty, which provides that the ships of France and Spain shall be admitted for twelve years into the ports of the ceded territory, without paying higher duties than the ships of the United States. To this gentlemen have opposed that part of the constitution which declares that no preference shall be given to the ports of one state over those of another, and that all duties, imposts, and excises, shall be uniform throughout the United States. There appears to be a strange inconsistency in the arguments of the gentleman from Connecticut. He tells you that this territory is not a state, and that it never can become a state; yet he afterwards declares that the treaty violates the constitution, by giving the port of New-Orleans a preference over the ports of the Atlantic states. There is surely a contradiction here. Whatever may be the future destiny of Louisiana, it is certain that it is not now a state. It is a territory purchased by the United States in their confederate capacity, and may be disposed of by them at pleasure. It is in the nature of a colony, whose commerce may be regulated without any reference to the constitution. Had it been the Island of Cuba which was ceded to us, under a similar condition of admitting French and Spanish vessels for a limited time into the Havannah, could it possibly have been contended that this would be giving a preference to the ports of one state over those of another, or that the uniformity of duties, imposts, and excises, throughout the United States would have been destroyed? and because Louisiana lies adjacent to our own territory, is it to be viewed in a different light? or can the circumstance of its being separated by a river only, instead of the sea, constitute any real difference in regard to the commercial regulations which we may think proper to establish? The restrictions in the constitution are to be strictly construed, and I doubt whether under a strict construc-

tion the very same indulgence might not be granted to the port of Natchez, which does not lie within any state, but in the territory of the United States. It has never been deemed expedient to do so, and in all probability never will. Nor is it presumable that this regulation in relation to New-Orleans would have been made, but for the importance of the great objects with which it was connected.

Mr. N. believed that the gentleman from Connecticut need not entertain any apprehensions that the provisions contained in the seventh article of the treaty were intended to commence the repeal of the counter-vailing duties. It was true that some gentlemen had thought very favourably of the repeal at a former session, and he acknowledged himself to be of that number. But as it was a regulation more materially affecting the commercial part of the community, and as they had been opposed to it, the subject was dropped. He did not know that there was any intention to revive it, although possibly a majority of that house might be inclined to assent to it. Yet this could have no connection with the treaty, much less could it have any connection with the question immediately under consideration. We only have to determine whether we will carry this treaty into effect. Whether we will agree to appropriate the fifteen millions of dollars, and authorize the president to take possession. The latter has been agreed to, and surely we cannot consent to receive possession without paying the equivalent promised on our part.

Mr. N. closed his remarks by again begging pardon of the committee for the time he had occupied; and offered his acknowledgments for the indulgent attention he had received.

*Mr. Rodney* said, that in the observations he rose to make, at that late hour, he should be brief, and apply them entirely to the constitutional question, as it was scarcely contended the bargain was not a good one. In making them he cordially joined with the gentleman from Connecticut (*Mr. Griswold*), when he expressed his wish that the discussion should be conducted with coolness and temper. It was not only the duty, but the

interest of every gentleman on the floor, that this important subject should be decided on argument, and argument alone. He felt the force of the objection urged by the gentleman from Maryland (Mr. Nicholson), that the discussion of some of the points was premature: he should, however, enter into a brief exposition of them.

It is contended that the United States have no right to purchase territory; that they have no right to admit the people of Louisiana to a participation of the rights derived from an admission into the union; and that a peculiar favour is about being granted to the ports of New-Orleans, in violation of the constitution.

In the view of the constitution, the union was composed of two corporate bodies; of states and territories. A recurrence to the constitution will show that it is predicated on the principle of the United States acquiring territory, either by war, treaty, or purchase. There was one part of that instrument, within whose capacious grasp all these modes of acquisition were embraced. By the constitution, congress have power to "lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." *To provide for the general welfare.* The import of these terms is very comprehensive indeed. If this general delegation of authority be not at variance with other particular powers specially granted, nor restricted by them; if it be not in any degree comprehended in those subsequently delegated, I cannot, said Mr. R. perceive why within the fair meaning of this general provision is not included the power of increasing our territory, if necessary for the *general welfare*, or *common defence*. Suppose, for instance, that Great-Britain should propose to cede to us the Island of New-Providence, so long the seat of pirates preying upon our commerce, and the hive from which they have swarmed; will any gentleman say that we ought not to embrace the opportunity presented, as a defence against further depredations? Suppose the Cape of Good Hope, where our East-Indiamen so generally stop, were offered to be ceded to us by the na-

tion to which it belongs, and that nation should say on our possessing it, you shall declare it a free port; is there any member who hears me that could contend that we were not authorized to receive it, notwithstanding the great advantages it would insure to us?

But it appears to me, independently of this provision of the constitution, and the gentleman from Connecticut (Mr. Griswold) admits it, that, according to the rights of war, we may extend our territory. An enemy might come within our lines, and we expel him; our lines not being the limits to which our arms would be confined, we could pass them, and take possession of the enemy's country, and thereby undoubtedly acquire a right to the territory occupied. For in the constitution it is expressly said, that congress shall have power "to declare war; grant letters of marque and reprisal, and make rules concerning captures on land and water;" and among the *jura bella* was clearly recognized the right of annexing territory. But there is one article of the constitution which is predicated on the right to purchase territory. We have a right to obtain territory by purchase from a state. In the provision made in the constitution respecting the territory of the United States, we find that congress are invested with power "to exercise exclusive legislation, in all cases whatsoever, over such district, not exceeding ten miles square, as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Here then is given to congress exclusive legislation over particular places, over the ten miles square, and over such places as they may purchase.— This provision is expressly predicated on the right to purchase, and only limits that purchase by the consent of the states. If congress have the right of purchasing territory from a state, how can gentlemen contend that they have not the right of purchasing territory else-

where, if in their judgment they shall consider it well calculated to subserve the great interests of the union.

It does appear to me that the right of acquiring territory must be included in the treaty-making power; as there are very few treaties, which are not merely commercial, that do not change the property belonging to nations. And if this principal power be contained in the treaty-making provision, every incidental power is, of consequence, to be considered as fairly embraced within it, and I should deem this important authority as nugatory, if it did not give the president and senate the right to accept a cession of territory. It is certainly not the right of the president and senate to make such a cession conclusively binding; when it shall embrace powers within the pale of those delegated to this house, it will require our sanction. Have we not also vested in us every power necessary for carrying such a treaty into effect, in the words of the constitution, which gives congress the authority to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." It, therefore, appears very clearly to my mind, that, according to the constitution, the United States have a right to acquire territory. If they possess this right according to the constitution, this measure cannot be said to be unconstitutional; and if not unconstitutional, as the gentlemen who have spoken against it did not insist upon the point of inexpediency, some of them because they believed that ground was not open, and others because it was not tenable, will ultimately give it their support.

But another constitutional objection is stated. Though the United States may acquire a valid title to the territory, the hills and the groves, the rivers and the lakes, it is alleged that they have no right to bring the persons inhabiting it, into a state in which they shall enjoy the blessings of free government. My friend from Maryland (Mr. Nicholson) has observed that the article of the treaty relating to this object is most cau-

tiously worded. If ever there was a precision of language calculated to avoid the imputation of an invasion of the constitution, it is the language of this article. Its words are :

“ The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.”

How are these people to be admitted? According to the principles of the federal constitution. Is it an open violation of any part of the constitution? No, an express reservation is made by those who formed the treaty, that they must be admitted under the constitution. Now if admitted agreeably to the constitution, it cannot be said to be in violation of it; and if not in violation of it, the fears of gentlemen are groundless.

But, as I observed before, does not the constitution refer to territory? Do not the United States possess territories now? Is the possession of territory confined by the constitution to those they now hold? I believe not; for in the constitution it is stated, that “ congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States.” Here is a clear recognition of territory belonging to the United States, and not merely of territory then held, but of territory which might futurely be acquired by treaty or purchase. And if this territory be ceded to the United States, congress have power, as soon as ceded, to make rules and regulations respecting it.

There is another sound answer to the objections of gentlemen. This is property ceded to us by the power ceding it with a particular reservation. I am not for quibbling about words or distorting terms. Taking the 7th article, and fairly considering it, it amounts to nothing more than a particular reservation; upon *delivering possession of the territory*, which I take to be the true

meaning of the language which is used; and will any gentleman say that accepting the treaty, under this stipulation, will not be most advantageous to us? What individual state will be affected by it more than any other? Does it give the state of Massachusetts an advantage over New-York? I would be glad to know what state it particularly affects, and in what way? "No preference," says the constitution, "shall be given by any regulation of commerce or revenue to the ports of one state over those of another." In what way, under this treaty, is there any preference of one port over another? I would be glad to see it pointed out, and to be shown whether there is any preference of Delaware over Massachusetts, or of Virginia over Georgia. No. The constitution adverts to *states* themselves; and the distinction between *states* and *territories* is bottomed upon reason. Whence the necessity of the distinction? When territories grow into states, and become represented in the public councils, a majority of them may league together, and carry into effect regulations prejudicial to other states. Hence the constitution provides that in all commercial regulations all the states shall be equally affected. But such a league cannot be effected by territories, which have no senators in the other branch, and in this only the voice, without the vote, of a single delegate. Independent of this consideration is this: if by any particular territorial regulation the territory of the United States is benefited, that territory being the common property of the United States, a public stock in which they all share, every state in the union reaps alike the benefit.

These are my reasons for considering this measure perfectly constitutional. I might dwell upon other reasons corroborative of this conviction; but these have been so ably enforced by my friends from Virginia and Maryland, and by other gentlemen, as to render more remarks superfluous. I cannot, however, avoid noticing the observation made yesterday and reiterated to-day, that we do not know whether we have a title to this territory, or whether it be not the purchase of so many acres of mere moonshine. I voted yesterday for some

papers, because I wished, beyond all cavil or dispute, to establish the constitutional right of this house to call for papers, and from a respect to the opinions of some gentlemen who considered them important, not from any doubts of my own as to the validity of the title. The publicity of the cession of Louisiana by Spain, its former owner, to France, is too notorious; it has been noticed, dilated on, and recognized in the British parliament, and in the senate of the United States. We have not in our possession, it is true, the original treaty of St. Idelfonso, nor the subsequent one, concluded between France and Spain at Madrid, which referred to the former, for we were not furnished with duplicates of either, nor have we the testimony of the king of Etruria to prove that every stipulation contained in them was strictly complied with; poor man, he is no more! We have not sent a commissioner to Madrid or St. Cloud to take the examination of the ministers of Spain and France, to obtain their evidence in order to verify the fact, of all conditions having been performed by France on her part; but we have seen in the papers which record the transactions of the times, the arrival of a French prefect of Louisiana at New-Orleans announced. We have read his proclamation to the inhabitants of that country, informing them of the cession, and, if I mistake not, our own government has received, through the proper channel, intelligence of the same event, which has been duly published. All these circumstances combined are satisfactory to my mind on this subject. No fact in the history of nations can be more rationally proven, and gentlemen should recollect that they rely on the same kind of testimony (the letter of Mr. King to the answer of lord Hawkesbury), when they confess themselves satisfied that England is agreed to this measure.

I would further observe from the course which the debate has taken, that if we had all the papers and documents, which the gentlemen desire, agreeably to the mode of argument which they have adopted, they might object to passing the necessary laws, until we had got possession of the country, and at the same time object

to our taking possession, without laws to authorize it. By thus arguing in a circle, as the logicians term it, they would most effectually defeat an object of the first importance to the community, and render the acquisition of an inestimable territory of as little value as the same extent of moon-shine or star-light. With these impressions, believing the measure a good one, and consistent with the constitution, I shall most cheerfully give my vote for carrying it into effect.

*Dr. Mitchell* rose, and said, he intreated the indulgence of the committee, for rising at so late a stage of the debate, when seven hours have already been employed in the sitting of the day. And the reason of his request was, that such extraordinary doctrines have been advanced against carrying into effect the treaty with France which cedes Louisiana to our nation, and such repeated allusions have been made to the sentiments which he submitted to the house during the debate of yesterday, that he felt himself called upon to attempt a reply, and therein to show that the grounds taken by the gentlemen of the opposition are neither strong nor tenable. Although the subject is ample and copious, he should endeavour to condense his remarks to so moderate a compass, as not to trespass long upon the patience of the committee.

My colleague, said Mr. M. who opened the debate this morning (Mr. G. Griswold), displayed in his speech the objections raised against the resolution on the table so fully, that he almost exhausted the subject. For in listening attentively to the reasoning of the gentleman from Virginia, who followed him (Mr. J. Lewis), and of the other gentleman from Virginia who spoke next (Mr. Griffin), he could not discern that any new or additional matter of much consequence had been urged. Nor did he discover much more than a repetition in substance of his colleague's reasoning, in what had been urged by the gentleman from Massachusetts (Mr. Thatcher), and the gentleman from Connecticut (Mr. R. Griswold); though the statement of their objections had received a form and colouring diversified according to the skill and ingenuity of each.

In the reply which he should make to the gentleman in opposition to the appropriations for carrying the treaty into operation, he should not examine their arguments severally as they had been brought forward in the course of the debate. That mode would necessarily lead him into tedious and needless repetition. He should therefore endeavour to reduce all the arguments he had heard from the other side of the house into their elementary propositions, and having done so, to show that they were weak in their nature and wrong in their direction. And even this view of the question would be much circumscribed, on account of the strong and masterly manner in which a part of the objections had been already repelled by his eloquent friend from Virginia (Mr. J. Randolph), and by the impressive remarks of his other friend from Delaware (Mr. Rodney).

The gentlemen, Mr. Chairman, who resist the provisions necessary to the completion of this treaty do so, because they say it has been ratified by the president and senate in open violation of the constitution of the United States, and is therefore no treaty, but a nullity, an instrument void *ab initio*, not a part of the supreme law of the land, and consequently not binding upon congress or the nation. They draw this bold and extraordinary conclusion from the style and meaning of the third and seventh articles of the treaty. The former of these, they say, is unconstitutional, because it proposes to annex a new territory, with its inhabitants, to our present dominion; and the latter, because it abolishes for a term of years the discriminating duties of tonnage and impost within the ceded territory, giving a preference there to France and Spain, and leaving those duties unaltered in all the ports of the union.

By the third article, it is agreed that the inhabitants of the ceded territory shall be incorporated into the union of the United States as soon as possible, according to the principles of the federal constitution, and be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and pro-

tected in the free enjoyment of their liberty, property, and the religion which they profess.

On expounding this article, my colleague has declared, that the president and senate have no power to acquire new territory by treaty, and he argues that our people are to be for ever confined to their present limits. This is an assertion directly contrary to the powers inherent in independent nations, and contradictory to the frequent and allowed exercise of that power in our own nation. We are constantly in the practice of receiving territory by cession from the Red Men of the west, the aborigines of our country. The very treaty mentioned in the president's message with the Kaskaskias Indians, whereby we have acquired a large extent of land, would, according to this doctrine, be unconstitutional: and so would all the treaties which add to the size of our statute book, with the numerous tribes of the natives on our frontiers. According to this construction, all our negociations so happily concluded with those people, whom we ever have uniformly acknowledged as the sovereigns of the soil, are nugatory, and to be holden for nought. He said, he was perfectly aware of the answer which would be made, that we held all our national domain under Great-Britain, by virtue of the treaty concluded at Paris in 1783. What, after all, was the amount of that cession by England? Certainly not a conveyance of a country which never was theirs, but rightfully belonged to the Indian natives; for it was in its true construction merely a *quit claim* of the pretensions or title to the land which the English had obtained by conquest and treaty from the French. By that negociation, the United States obtained a bare *relinquishment* of the claims and possessions of those two powerful nations. But the paramount title of the original inhabitants was not affected by this. However contemptuously the rights of these rude and feeble tribes had been regarded by the Europeans, their descendants in these states had considered them with recognition and respect. Until the Indians sold their lands for an equivalent, the humane and just principles of the Ame-

rican government acknowledge them to be the only legitimate owners. And the sovereignty acquired by treaty or purchase to our government, was derived from the title which the natives transferred to them; as grantees in a fair bargain and sale.

Such, Mr. M. argued, were the rules of true construction, and these rules admitted and acted upon by the federal government; and yet according to the novel doctrine of this day, every treaty with the natives for parcels of their country, although hitherto deemed lawful, would be an unconstitutional act. According to this notion, every treaty for lands, holden with the aborigines since the organization of the government, was a violation of the constitution. And thus this invaluable instrument, this bulwark of our liberties, had been violated perhaps twenty times or more, since we began to buy the surplusage of their hunting grounds. The Indian tribes are as much aliens as any other foreign nations. Their lands are as much foreign dominion as the soil of France or Spain. Yet we have gone on to annex the territories which they sold us to our present territory, from the time we acquired independence, and no mortal, until this debate arose, Mr. Chairman, has so much as thought that thereby a breach of the constitution was made. My colleague is surely entitled to great credit for his perspicuity in finding out that all our great and wise predecessors in administering this government, have been blunderers and constitution-breakers. But, sir, the just judgment on this subject is, that the presidents and senates of the United States have heretofore acted constitutionally in acquiring by purchase foreign dominion from the alien Indians. And by parity of reasoning, they have acted not only constitutionally, but eminently for the interest of the country, in buying Louisiana from the White Men, its present sovereigns.

But independent of correct principle and steady precedent in favour of the acquirement of new territory, it may be worth the while to mention a few of the strange consequences which flow from the doctrine which the gentlemen on the other side of the house con-

tend for. According to their reasoning, if by any force of the currents of the ocean, or any conflicts of the winds and the waves, a new surface of earth should emerge from the neighbourhood of Cape Hatteras, it would be unconstitutional to take possession of it. Yet it appears to me, sir, very like an absurdity to say the United States would break their bond of union by erecting a light-house on it. Suppose that by volcanic action, islands should be suddenly elevated from the bottom of the neighbouring Atlantic, as they have repeatedly risen from the depths of the Mediterranean, would it be unconstitutional to take possession of them? So far from it, there would on the other hand be a duty on the government to assume the dominion of all adjacent islands. Again, suppose for a moment that our present limits were *full* of people, would it be unconstitutional to purchase additional territory for them to settle upon? Must the hive always contain its present numbers, and no swarm ever go forth? At this rate we should, before a great lapse of time, arrive at a *plenum* of inhabitants; and if no new settlement could be obtained for them, the Chinese custom of infanticide must be tolerated to get rid of those tender little beings for whom food enough could not be procured, to rear them to manhood. And thus, when this *maximum* of population shall have arrived, there would be no constitutional power to purchase and possess any of the waste lands on this or the other side of the Mississippi, for them to spread and thrive upon. A doctrine against which he confessed that his understanding revolted.

Our government having in this manner the right of acquiring additional territory, had very often exercised that right by actual purchases, and by possessions and settlements afterwards. The whole of the recent state of Ohio, and of the Indiana territory, was obtained and peopled in this manner. And in the settlement of limits, both on the side of Florida and Nova Scotia, the principle had again and again been acted upon; and, strange to tell, nobody, until this eventful time, had possessed acuteness enough to find out the error.

But the gentleman from Connecticut, Mr. Chairman (Mr. R. Griswold), contends that even if we had a right to purchase soil, we have no business with the *inhabitants*. His words, however, are very select; for he said, and often repeated it, that the treaty-making power did not extend to the admission of foreign nations into this confederacy. To this it may be replied, that the president and senate have not attempted to admit *foreign nations* into our confederacy. They have bought a tract of land, out of their regard to the good of our people and their welfare; and this land congress are called upon to pay for. Unfortunately for the bargain, this region contains civilized and christian inhabitants; and their existence there, it is alleged, nullifies the treaty. The gentleman construes the constitution of the United States very differently from the manner in which Mr. M. himself did. By the third section of the third article of that instrument it is declared, that congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, and nothing therein contained shall be construed so as to prejudice any claims of the United States, or of any particular state.

In the case of Louisiana, no injury is done, either to the nation or to any state belonging to that great body politic. There was nothing compulsory upon the inhabitants of Louisiana to make them stay and submit to our government. But if they chose to remain, it had been most kindly and wisely provided, that until they should be admitted to the rights, advantages, and immunities of citizens of the United States, they shall be maintained and protected in the enjoyment of their liberty, property, and the religion which they profess. What would the gentleman propose that we shall do with them? Send them away to the Spanish provinces, or turn them loose in the wilderness? No, sir, it is our purpose to pursue a much more dignified system of measures. It is intended, *first*, to extend to this newly acquired people the blessings of law and social order; to protect them from rapacity, violence, and anarchy; to make them secure in their lives, limbs,

property, reputation, and civil privileges ; to make them safe in the rights of conscience. In this way they are to be trained up in a knowledge of our own laws and institutions. They are thus to serve an apprenticeship to liberty ; they are to be taught the lessons of freedom ; and by degrees they are to be raised to the enjoyment and practice of independence. All this is to be done as soon as possible, that is as soon as the nature of the case will permit, and according to the *principles of the federal constitution*. Strange ! that proceedings declared on the face of them to be constitutional, should be inveighed against as violations of the constitution ! Secondly, after they shall have been a sufficient length of time in this probationary condition, they shall, as soon the principles of the constitution permit, and conformably thereto, be declared citizens of the United States. Congress will judge of the time, manner, and expediency of this. The act we are now about to perform will not confer on them this elevated character. They will thereby gain no admission into this house, nor into the other house of congress. There will be no alien influence thereby introduced into our councils. By degrees, however, they will pass on from the childhood of republicanism, through the improving period of youth, and arrive at the mature experience of manhood ; and then they may be admitted to the full privileges which their merit and station will entitle them to. At that time a general law of naturalization may be passed ; for I do not venture to affirm, that by the mere act of cession the inhabitants of a ceded country become of course citizens of the country to which they are annexed. It seems not to be the case, unless specially provided for. By the third article it is stipulated, that the inhabitants of Louisiana shall *hereafter* be made citizens ; *ergo*, they are not made citizens of the United States by mere operation of treaty. In confirmation of this construction, I will mention the second article of the treaty of amity, commerce, and navigation between the United States and his Britannic majesty, concluded in 1794. It is therein stipulated, that all British subjects who shall continue within the evacuated posts and precincts,

should be considered, if they remained there longer than one year, to have abandoned all allegiance to the crown of Britain, and to have made their election to become citizens of the United States: after which, by taking the oath of allegiance, they become instantly, by act of treaty, and by force of statutè, citizens of the United States. I therefore consider the point already adjudged, when the treaty of 1794 was decided on, that, without an act of congress, aliens can be converted into citizens by the provisions of a treaty duly ratified by the president and senate. In the treaty respecting Louisiana, there is happily no cause for alarm. This power of making citizens has not been exercised by the president and senate, but at a future day may be used by congress.

But I proceed to the second objection to the treaty. This is derived from an alleged unconstitutionality in the seventh article. By this it is agreed, that French ships, coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies, shall be admitted, for twelve years, into New-Orleans and the other legal ports of entry in Louisiana, without being subject to any greater duty on merchandize or tonnage than is paid by our own citizens. The like covenant exists with regard to the ships, ports, and colonies of Spain. This, they say, is a violation of a declaration contained in the ninth section of the first article of the constitution, which declares, that no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another.

In my view of this subject, Mr. Chairman, this prohibitory clause of the constitution is meant as a check to the legislative power of congress only, and by no means as a restraint upon the treaty-making power of the president and senate. The constitution leaves this very broad, and with great wisdom; it being improper and impossible to limit the negotiations which it might be expedient for this government to make with other governments. From the silence of the constitution on the matter and extent of treaties, it has been argued, with great appearance of truth and fairness, that there

is no constitutional boundary to the treaty-making authority. Hence, according to this mode of reasoning, the treaty-making privilege, being so vast and unlimited, is unfettered by constitutional impediments, and like that great charter of freedom itself, originates from its own source, supreme laws of the land. A treaty therefore can scarcely be conceived to be unconstitutional, except in the case of outraging all common principles, rights, and feelings. On this ground, the commercial regulations of the seventh article are secured against all charges of unconstitutionality.

But, even if the treaty-making power was not so extensive and mighty, there would be no violation of any of its directions by granting the favours to Spain and France which the treaty stipulates. For the preference forbidden by the constitution applies to states in the union and equal members thereof. The domain we are about to acquire is not a state: for that is a sovereign and independent republic. Nor is it a province: this being an inhabited country subdued by force of arms. Nor is it a colony: which is a sprout or scion, as it were, of the parent trunk. In its relation to us, it is a territory, a word signifying a peculiar and mingled idea of a country and inhabitants in *the inchoative or initial* condition of a republic. By the treaty, therefore, there is no preference given to one state over another, in any commercial regulations. The port of New-Orleans is not a part of any state in the union. The abolition of the discriminating duties in favour of the two European nations is confined absolutely to the ports of Louisiana. They have no preference in the ports of any of the states. Nor is there given to one any advantage over the other. In right construction, these indulgencies are, in fact, a part of the purchase money; and on account of this valuable consideration, congress will have less money to appropriate, and the nation thereby be saved from several millions of additional debt. Our constituents have certainly great reason to rejoice at this. I therefore conclude that the apprehension and alarm expressed by the two gentlemen from Virginia (Mr. J. Lewis and

Mr. Griffin) were wholly unfounded. There is no breach of the constitution.

Notwithstanding all this, one gentleman says the adoption of this seventh article will give "a death wound to the northern commerce of the United States:" and another declares, "that under it, France and Spain will gain a monopoly of the commerce and navigation of Louisiana and the adjacent country." Mr. M. said he could not conceive how this should happen. Ever since the ratification of the treaty of *St. Lorenzo el Real*, there had been a great resort of American vessels to the Mississippi. From New-York in particular, there had been large and frequent commercial intercourse, almost ever since that time. This had been rapidly increasing, and promised to be more and more important, and all this under a foreign jurisdiction, and while Louisiana belonged to Spain. Now that province was about to be changed into a territory of the United States. What an augmentation of tonnage and navigation might we not expect, when our own Mississippi should be whitened with our canvas? How eagerly would the eastern and middle states engage in a carrying trade, now rendered free from impediment. It appeared to him that the transportation of the vast and valuable productions of both banks of that river would increase the demand for vessels. Greater capital will be called for to carry on the Louisiana commerce, and greater profits would result. Ship building and all the attendant arts would be promoted. The number of seamen would be augmented; who, trained up to maritime discipline in merchant vessels, might on any appearance of danger be transferred to the navy, and serve as the bulwark and safeguard of the nation. Valuing most highly, as he did, the commercial prosperity of the United States, he considered that a new spring would be given to all its enterprize, by the acquisition of Louisiana. Our skill in commerce and dispatch in navigation would overmatch and beat down all the competition of the French and Spaniards. A more cordial union would be promoted between the western and eastern states, who would then be connected by the strong ties of commerce

and interest, as well as of law and policy ; and the jealousies, by which attempts had been made to divide them, and which had been raised to a mountainous magnitude, would be entirely levelled and done away. He was confident that all the Atlantic sea-ports, and, beyond all, the great commercial city which he represented, would participate largely of the benefits flowing from our complete sovereignty of the Mississippi and all its waters.

Mr. M. then applauded the mild and dignified conduct of an administration which had accomplished these great events by peaceful means, rather than war ; and concluded, that if in the course of his observations he had not been successful in convincing the understandings of the gentlemen who thought differently from him, he had at least expressed some of the reasons which governed his judgment and would guide his vote on the proposition then depending. He hoped the resolution would be agreed to, for making immediate preparatory provision to take possession of Louisiana, according to the stipulations of the treaty.

*Mr. J. Randolph* said, that a sense of duty alone could have induced him to rise at that late hour. He wished to call the attention of the committee to a stipulation in the treaty of London. (Here Mr. R. read an extract from the third article of that treaty, whereby the United States are pledged not to impose on imports in British vessels from their territories in America, adjacent to the United States, any higher duties than would be paid upon such imports, if brought into our Atlantic ports in American bottoms.) In this case, he said, gentlemen could not avail themselves of the distinction taken by his friend from Maryland (Mr. Nicholson) between a territory and a state, even if they were so disposed, since the ports in question were *ports of a state*. The ports of New-York, on the lakes, were as much ports of that state, as the city of New-York itself ; they had their custom-house officers ; were governed by the same regulations as other ports ; duties were enacted at them ; and yet, under the article of the British treaty, which had been just read, British bot-

toms could and did enter them subject to no higher duties than were paid by American bottoms in the Atlantic ports.

Mr. R. said that he did not mean to affirm that this exemption made by the treaty of London was constitutional, so long as a distinction prevailed between American and British bottoms in other ports. He had never given a vote to carry that treaty into effect; but he hoped that the gentlemen from Connecticut, both of whom he believed had done so; one of whom at least he knew had been a conspicuous advocate of that treaty: he hoped that gentleman (Mr. Griswold) would inform the committee how he got over the constitutional objection to this article of the treaty of London, which he had endeavoured to urge against that under discussion. How could the gentleman, with the opinion which he now holds, agree to admit British bottoms into certain ports, on the same terms on which American bottoms were admitted into American ports generally? thereby making that very difference, giving that very preference to these particular ports of certain states, which he tells us cannot constitutionally be given to the port of New-Orleans, although that port is not within any state, and if his (Mr. Griswold's) doctrine be correct, not even within the United States.

The gentleman from Connecticut professed a wish that this important discussion should be conducted with moderation and candour. In this sentiment he concurred. He was therefore altogether unprepared, after this preamble, to hear the gentleman from Connecticut represent the treaty in question as conceding the most valuable commercial privileges to France and Spain, and thereby sapping the very foundation of our own carrying trade. In the spirit of candour, the stipulations in question would be viewed, not as conceding advantages in trade to those nations, but as securing them to ourselves. The article in question did indeed profess to grant, for a limited time, to French and Spanish vessels, laden with the products of their respective countries, admission into the ports of the ceded territory, on equal terms with our own ships. But although, nominally,

an advantage has been conceded to these nations, substantially their situation was changed for the worse, and the benefit in fact conferred on us. For what were our rights in these ports, and what were theirs, setting aside the treaty? The treaty then had rendered our situation more eligible and theirs less so. How then could gentlemen declare that it was calculated to injure our carrying trade? when by it our trade was put on the footing of absolute security; whilst that of France and Spain was admitted under considerable restrictions, enjoying in but one particular, and for twelve years only, an equality with ours. Their trade, before on so superior a footing, had descended from its pre-eminence in privilege, and given way to ours. And yet gentlemen warn us of the destruction of our carrying trade and commercial prosperity, from the very source which has enlarged and secured both. The enemies of the treaty, therefore, are the advocates of the trade of France and Spain, and the enemies, so far, of our own: since, by retaining things in their present posture, they would continue to those nations the superior advantages which they now enjoy in the ports of Louisiana; they would continue the restrictions which heretofore have fettered our commerce to that country, and they would refuse to put our trade on a footing superior to that of France and Spain.

But whilst gentlemen endeavour to alarm us with the idea of this formidable competition, I cannot, sir (said Mr. R.), feel a moment's apprehension from this quarter. Exclusive of the limitation of twelve years, and the restriction that their cargoes shall be of French or Spanish growth or manufacture, who that considered the present condition and future prospects of those countries, could regard them as formidable commercial competitors? Was there not infinitely greater probability that the third article of the treaty of London, which had no limitation as to time, and embraced our whole frontier on the side of Canada, would enable Great-Britain to supply that frontier on terms as cheap, or cheaper, than we ourselves could?

With more candour, however, the gentleman has boldly avowed that he was among the number of those who, at the last session of congress, were for pursuing "vigorous measures," for enforcing our rights in relation to the Mississippi. What those vigorous measures were, the house would be at no loss to determine. The gentleman had disdained to deny his principles; he would not now shrink from what he had then advocated; and Mr. R. said he applauded him for it.

Mr. Randolph said the gentleman had laid his premises a great way off, as if from the expectation that they would not be closely examined, and that, therefore, there would be nothing to oppose to the conclusions which he had drawn from them. He had stated a case scarcely supposable, and from it inferred the very principle in question. His whole argument was founded on presuming the principle to be granted, which was in dispute. The United States, says he, cannot incorporate into the union Great-Britain or France; and therefore they cannot unite to themselves the colonies of either nation. If the gentleman meant to prove the impolicy or impracticability of adding France or England to the United States, no one, he believed, was disposed to question the justice of his remark. But the position in contest was, can the United States, constitutionally, extend their limits? And this point in dispute the gentleman takes for granted by saying, that we cannot extend our dominion over England or France, and therefore cannot acquire dominion in any other country. That is, we cannot, because we cannot.

On the subject of expediency, the gentleman had undervalued the country west of the Mississippi, and had declared that he considered the barren province of Florida as more important to us. Mr. R. asked if the country west of the Mississippi were not valuable, according to the gentleman's own statement, since it afforded the means of acquiring Florida, which he prized so highly, from Spain. He had no doubt of the readiness of that power to relinquish Florida, in itself a dead expence to her: only valuable as an out-work to her other possessions, and now insulated by those of the

United States, for a very small portion of the country which we claimed in virtue of the treaty under discussion. He said that he stated early in the debate, and had stated truly, that the limits of Louisiana were not accurately defined ; but, nevertheless, we were not without some light on this interesting subject. Thirty years before the Spaniards made their settlement of the Adais, the French had established themselves on the bay of St. Bernard, or St. Louis: the nearest Spanish colony being then on the river Panuco, one hundred leagues to the west. The great river of the north, as nearly equidistant between the Panuco and bay of St. Bernard, was, on the principle generally admitted by European nations forming establishments in savage countries, considered by France as the boundary between French and Spanish America ; and accordingly we find it so laid down in many of the old maps. This boundary would embrace within the limits of Louisiana some very valuable dominions of Spain, including the rich mines of St. Barbe, and the city of Santa Fe, the capital of New Mexico. On the other hand, in virtue of her settlement of the Adais, Spain might claim the country as far east as the river Mexicana, and to the high lands dividing the waters of the north river from those of the Mississippi. Beyond them she could have no colour of claim. In settling this important barrier there were ample materials for the acquisition of Florida, still retaining to ourselves all the country watered by the Mississippi.

Another gentleman from Connecticut (Mr. Dana) had declared, that if the inhabitants of the ceded territory were now, or should hereafter be, admitted into the union, it would be a violation of that clause of the constitution which relates to the establishment of an uniform rule of naturalization, since those people will be converted from foreigners to citizens, not in the mode prescribed by our naturalization law. Mr. Randolph wished to know in what manner the subjects of Great-Britain, settled around our western posts, were admitted to the privilege of citizenship ? Whether it was not done by treaty, and not in the mode prescribed by law ? How did the people at Natchez become en-

titled to the rights of citizens? Although born out of our allegiance, the moment our government was established over them, did they not possess, of right, a security for their lives and property? Could they not demand trial by jury in case of criminal prosecution? When he spoke of their acquiring the rights of citizens, Mr. Randolph said, he did not mean in the full extent in which they were enjoyed by citizens of any one of the particular states, since they possessed not the right of self-government, but those rights of personal liberty, of personal security, and of property, which were among the dearest privileges of our citizens. A stipulation to incorporate the ceded country does not imply that we are bound ever to admit them to the unqualified enjoyment of the privileges of citizenship. It is a covenant to incorporate them into our union, not on the footing of the original states, or of states created under the constitution, but to extend to them, according to the principles of the constitution, the rights and immunities of citizens; being those rights and immunities of jury trial, liberty of conscience, &c. which every citizen may challenge, whether he be a citizen of an individual state, or of a territory subordinate to and dependent on those states in their corporate capacity. In the mean time they are to be protected in the enjoyment of their existing rights. There is no stipulation, however, that they shall ever be formed into one or more states.

He denied the correctness of the doctrine advanced by the same gentleman, that the stipulation entered into by France, in time of war, to raise the duke of Parma to the throne of Etruria, bound her to obtain a recognition of that king from every power of Europe. All which concerned us in that treaty had been recited in ours with France. By the treaty of St. Idelfonso his catholic majesty stipulates “to re-deliver (*retroccder*) to the French republic, six months after the full and entire execution of the conditions and stipulations herein, relative to his royal highness the duke of Parma, the colony or province of Louisiana.” What these stipulations were is certainly known only to the parties themselves, for they never were officially made public,

although we are at no loss to conjecture them. Nor are we at all concerned whether France has or has not complied with them; because, in a treaty executed at Madrid, six months after, in March, 1801, they show that they consider the former treaty as having passed the title to the country to France. The fifth article is as follows: "This treaty being in pursuance of that already concluded between the first consul and his catholic majesty, by which the king delivers to France possession of Louisiana, the contracting parties agree to carry into effect the said treaty," &c. Spain, therefore, being satisfied as to the stipulations entered into by France in the treaty of Idelfonso, declares herself, in the second treaty, ready to re-deliver the country to her whenever she was ready to receive it; and Mr. Randolph said, he had it from high authority, that the royal mandate to that effect was in the hands of the minister of the French republic, near the United States, and would be forwarded to the existing government of Louisiana, so soon as the treaty should be confirmed on our part.

Having departed considerably from the particular point on which he wished to be satisfied by the gentleman from Connecticut, who had spoken first (Mr. Griswold), he would again recall the attention of that gentleman to the third article of the treaty of London and request that he would reconcile its provisions to the doctrine which he had advanced on the seventh article of the treaty then before the committee.

Mr. Speaker having resumed the chair, Mr. Dawson reported that the committee, according to order, had the message, treaty, conventions, and motion under consideration, and came to several resolutions thereupon, which he delivered in at the clerk's table, where the same were read as follows:

1. *Resolved*, That provision ought to be made for carrying into effect the treaty and conventions concluded at Paris on the 13th of April, 1803, between the United States of America and the French republic.

2. *Resolved*, That so much of the message of the president, of the 21st instant, as relates to the establish-

ment of a provisional government over the territory acquired by the United States in virtue of the treaty and conventions lately negotiated with the French republic, be referred to a select committee; and that they report by bill or otherwise.

3. *Resolved*, That so much of the aforesaid conventions as relates to the payment by the United States of sixty millions of francs to the French republic; and to the payment by the United States of debts due by France to citizens of the United States, be referred to the committee of ways and means.

The house proceeded to consider the said resolutions at the clerk's table, whereupon,

The first resolution being again read, was, on the question put thereupon, agreed to by the house. Yeas 90—Nays 25.

The yeas and nays being demanded by one fifth of the members present,

Those who voted in the affirmative, are

YEAS—Messrs. Alston, jun. Alexander, Anderson, Archer, Bard, Bedinger, Bishop, Blackledge, Boyle, Brown, Butler, G. W. Campbell, Casey, Chittenden, Claggett, Claiborne, J. Clay, M. Clay, Clopton, Conrad, Crowningshield, Cutts, Dawson, Dickson, Earle, Earley, Elliott, Eppes, Eustis, Findley, Fowler, Goodwyn, Gray, Gregg, Hampton, Hanna, Hasbrouk, J. Heister, Hore, Holmes, Hunt, Jackson, Jones, Kennedy, Knight, Leib, Lucas, Lyon, M'Cord, M'Creery, Merewether, S. L. Mitchill, N. R. Moore, T. Moore, Morrow, New, Newton, jun. Nicholson, Olin, Palmer, Patterson, Purviance, J. Randolph, J. Rea (Pen.), J. Rhea (Tén.), Richards, Rodney, Root, Sammons, Sandford, Seaver, Smilie, J. Smith (N. Y.), J. Smith (Vir.), Stanford, Stanton, Stewart, Thomas, Thompson, J. Trigg, Van Cortlandt, Varnum, Verplank, Walton, Whitehill, M. Williams, Winn, Winston, Wynns—90.

NAYS—Messrs. Chamberlin, Cutler, Dana, Davenport, Dwight, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hough, J. Lewis, jun. T. Lewis, Livingston, N. Mitchell, Plater, Sands, J. C. Smith, Sted-

man, Stephenson, Taggert, Tenney, Thatcher, Wadsworth, L. Williams—25.

The second resolution being again read, and amended at the clerk's table, was, on the question put thereupon, agreed to by the house, as followeth:

*Resolved*, That so much of the message of the president, of the 21st instant, as relates to the occupation and establishment of a provisional government over the territory acquired by the United States, in virtue of the treaty and conventions lately negotiated with the French republic, be referred to a select committee, and that they report by bill or otherwise.

*Ordered*, That Mr. John Randolph, jun. Mr. John Rhea, of Tennessee, Mr. Hoge, Mr. Gaylord Griswold, and Mr. Bedinger, be appointed a committee, pursuant to the said resolution.

The third resolution reported from the committee of the whole house being again read, was on the question being put thereupon agreed to by the house.

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WEDNESDAY, OCTOBER 27.

Mr. Randolph, from the committee of ways and means, reported the following bill for carrying into effect the Louisiana convention:

### A BILL

*For carrying into effect the convention of the 30th April, 1803, between the United States of America and the French republic.*

*Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That, for the purpose of carrying into effect the convention of the 30th day of April, 1803, between the United States of America and the French republic, the secretary of the treasury be, and he is hereby authorized,*

to cause to be constituted, certificates of stock, signed by the register of the treasury, in favour of the French republic, or its assignees, for the sum of 11,250,000 dollars, bearing interest of six per centum per annum, from the time when possession of New-Orleans shall have been obtained, in conformity with the treaty of the 30th day of April, 1803, between the United States of America and the French republic, and, in other respects, conformable to the convention aforesaid; and the president of the United States is authorized to cause the said certificates of stock to be delivered to the government of France, or to such person or persons as shall be authorized to receive them, in three months, at most, after the exchange of the ratifications of the treaty aforesaid, and after Louisiana shall be taken possession of in the name of the government of the United States; and credit, or credits, to the proprietors thereof, shall thereupon be entered and given upon the books of the treasury, in like manner as for the present domestic funded debt, which said credits, or stock, shall thereafter be transferable only on the books of the treasury of the United States, by the proprietor or proprietors of such stock, his, her, or their attorney: and the faith of the United States is hereby pledged for the payment of the interest, and for the reimbursement of the principal, of the said stock, in conformity with the provisions of the said convention. *Provided*, however, that the secretary of the treasury may, with the approbation of the president of the United States, and with the assent of the proprietors of the said stock, vary the terms and instalments fixed by the convention for its reimbursement: *And provided also*, That every proprietor of the said stock may, until otherwise directed by law, on surrendering his certificate of such stock, receive another to the same amount, and bearing an interest of six per centum per annum, payable quarter yearly at the treasury of the United States.

Sec. 2. *And be it further enacted*, That the annual interest accruing on the said stock, which may, in conformity with the convention aforesaid, be payable in Europe, shall be paid at the rate of four shillings and

sixpence sterling for each dollar, if payable in London, and at the rate of two guilders and one half a guilder, current money of Holland, for each dollar, if payable in Amsterdam.

Sec. 3. *And be it further enacted*, That a sum equal to what will be necessary to pay the interest which may accrue on the said stock to the end of the present year, be, and the same is hereby appropriated for that purpose, to be paid out of any monies in the treasury not otherwise appropriated.

Sec. 4. *And be it further enacted*, That from and after the end of the present year (in addition to the annual sum of seven millions three hundred thousand dollars yearly appropriated to the sinking fund, by virtue of an act, entitled “an act making provision for the redemption of the whole of the public debt of the United States”), a further annual sum of seven hundred thousand dollars, to be paid out of the duties on merchandize and tonnage, be, and the same hereby is, yearly appropriated to the said fund, making in the whole an annual sum of eight millions of dollars, which shall be vested in the commissioners of the sinking fund in the same manner, shall be paid by them for the same purposes, and shall be, and continue appropriated, until the whole of the present debt of the United States, inclusively of the stock created by virtue of this act, shall be reimbursed and redeemed, under the same limitations as have been provided by the first section of the above-mentioned act, respecting the annual appropriation of seven millions three hundred thousand dollars, made by the same.

Sec. 5. *And be it further enacted*, That the secretary of the treasury shall cause the said further sum of seven hundred thousand dollars to be paid to the commissioners of the sinking fund in the same manner as was directed by the above-mentioned act, respecting the annual appropriation of seven millions three hundred thousand dollars: and it shall be the duty of the commissioners of the sinking fund to cause to be applied and paid out of the said fund, yearly, and every year, at the treasury of the United States, such sum and

sums as may be annually wanted to discharge the annual interest and charges accruing on the stock created by virtue of this act, and the several instalments, or parts or principal of the said stock, as the same shall become due, and may be discharged, in conformity to the terms of the convention aforesaid, and of this act.

The bill was read twice, and referred to a committee of the whole to-morrow.

A bill was received from the senate, enabling the president to take possession of Louisiana, and for the establishment of a temporary government over Louisiana, which was twice read, and referred to the same committee.

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THURSDAY, OCTOBER 27.

Mr. Randolph, from the committee of ways and means, reported a bill making a provision for the payment of the claims of the citizens of the United States, on the government of France, the payment of which has been assumed by the United States, in virtue of the convention with France of the 30th of April.

Read twice, and referred to a committee of the whole to-morrow.

On motion of Mr. Nicholson the house resolved itself into a committee of the whole, *Mr. John C. Smith* in the chair, on the bill from the senate, entitled

### AN ACT

*To enable the president of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last ; and for other purposes.*

The bill having been read by paragraphs, as follows:

*Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That*

the president of the United States be, and he is hereby authorized to take possession of, and occupy the territories ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the army and navy of the United States, and of the force authorized by an act passed the third day of March last, entitled, "An act directing a detachment from the militia of the United States, and for erecting certain arsenals," which he may deem necessary: and so much of the sum appropriated by the said act as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the president of the United States.

Sec. 2. *And be it further enacted*, That until congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the president of the United States shall direct.

*Mr. J. Randolph* said he was apprised that the bill was of such a nature as seemed to delegate to the president of the United States a power, the exercise of which was intended to have but a short duration; he was also aware that some such power was necessary to be vested in the executive, to enable him to take possession of the country ceded by France. But he could conceive no cause for giving a latitude, as to time, so extensive as that allowed by the second section, which says, that "until congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person or persons, and shall be exercised in such manner, as the president of the United States shall direct." If we give this power out of our hands, it may be irrevocable until congress shall have made legislative provision; that is, a

single branch of the government, the executive branch, with a small minority in either house, may prevent its resumption. He did not believe that under any circumstances it was proper to delegate to the executive a power so extensive; but if proper under certain circumstances, he was sure it was improper under present circumstances. As he conceived it proper to deal out power to the executive with as sparing a hand as was consistent with the public good, he should move an amendment to substitute in the place of the words "congress shall have made provision for the temporary government of the said territories," these words, "the expiration of the present session of congress, unless provision for the temporary government of the said territories be sooner made by congress." So that if congress shall make provision for the government of the territory, at any time during the session, the power of the president will cease, and at any rate at the expiration of the session. In other words, this amendment will compel congress to take early measures for reducing this enormous power, delegated to the executive, by the establishment of a government for the people of Louisiana.

*Mr. R. Griswold* moved to strike out the whole of the second section, which would supersede the motion of the gentleman from Virginia. He made this motion to obtain an explanation respecting the nature and extent of the delegated power. That section provides "that until congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the president of the United States shall direct." I wish to know, said *Mr. Griswold*, whether any gentleman can inform me what the military, civil, and judicial powers exercised by the officers of the existing province are; for we are about to confirm them, and direct their execution by the authorities of the United States.

It is probable that some of them may be inconsistent with the constitution of the United States. We have certain restrictions on powers exercised under it. For instance, that the habeas corpus shall only be suspended in cases of invasion or rebellion, and a variety of other restraints. It is for this reason that I think we ought to have some knowledge of the powers exercised in Louisiana, before we confirm them in the lump; and in order to obtain this information, I move to strike out the section.

*Mr. Elliot* rose to second the motion of the gentleman from Connecticut, and to express his coincidence in the sentiment of that gentleman on this subject. He would never consent to delegate, for a single moment, such extensive powers to the president, even over a territory. Such a delegation of power was unconstitutional. If such a provision as that contemplated by the section were necessary, it became congress itself to enter upon the task of legislation.

*Mr. J. Randolph* had hoped that some other member would have given the gentleman from Connecticut the satisfaction he asked, in relation to the provisions of the section proposed to be stricken out. No one having risen, he would do it himself as well as he was able. That gentleman asks whether we know the civil, military, and judicial powers that subsist in Louisiana, and contends that it is necessary we should know them before they are transferred to the executive of the United States. If the section were to stand as it now does, *Mr. R.* said, he would be as unwilling as the gentleman from Connecticut to agree to it. But with the proposed limitation he saw no substantial objection to it. He was one of those who did not know with precision what the subsisting civil, military, and judicial powers exercised in Louisiana were, and yet he saw not the difficulty which the gentleman had stated as to the temporary transfer of the powers to the executive with the limitation proposed. And wherefore? Because in the nature of things it was almost impossible to take possession of the country without the exercise of such powers at some point of time, and if they should be

exercised but for a single moment, such exercise would be as hostile to the principles of the gentleman as the exercise of them for a whole year. I ask, said Mr. R. whether, if the country should be taken possession of on the principles advocated by the gentleman on a former day, these powers would not at all have attached to the executive? Suppose, instead of assuming the civil government of the territory, it had been taken possession of by storm, by an army of 40 or 50,000 soldiers. Will the gentleman contend that under such circumstances, the privilege of the habeas corpus or trial by jury would have been invaded? Undoubtedly not. If the gentleman would advert with precision to the first section, he will perceive that it was contemplated to take possession in such a manner as will give the United States security in that possession. For though we might not doubt the disposition of the government of France to give us a secure possession, or apprehend difficulty from any other quarter, yet it would be recollected that there were citizens or subjects in the territory requiring some government. It was not impossible that on taking possession there may be some turbulent spirits, who, having at heart the advancement of personal schemes, may be disposed to resist. It would be unwise then in congress to delay making the requisite provision, until necessity claimed it, and until, perhaps, after congress had adjourned.

Gentlemen will see the absolute necessity of the path chalked out by the senate. They will see the necessity of the United States taking possession of the country in the capacity of sovereigns, in the same extent as that of the existing government of the province. After having taken possession, and being in the secure enjoyment of the country, it will be extremely proper to guard against any apprehended executive invasion of right. This step will then be politic, and it will be observed that the section, as amended, enjoins this duty upon congress. If, however, the gentleman from Connecticut will show us any way, in which the country may be taken possession of with security, and by which the people may enjoy all the rights and franchises of citizens

of the United States immediately, I shall be happy to give it the sanction of my vote. But to my mind this appears impossible.

*Mr. Griswold* thought it extraordinary that the gentleman from Virginia should call upon him to propose a plan for avoiding the difficulties that would apparently result from the system proposed by the bill, when it had only that day been laid upon their tables, and had been yesterday refused to be referred to a select committee, and of consequence no time for reflection had been allowed. Under these circumstances, it was indeed extraordinary that he should be expected to propose a plan. He confessed he was unable to offer any. To do it would doubtless require time and deliberation. It was sufficient for him that the bill infringed the constitution. By the second section, it is proposed to transfer to the president of the United States all the powers, civil, military, and judicial, exercised at present in that province. What are those powers? No gentleman is able to inform me. It may be presumed that they are legislative; the president, therefore, is to be made the legislator of that country: that they are judicial; the president, therefore, is to be made judge: that they are executive, and so far they constitutionally devolve on the president. Hence we are about making the president the legislator, the judge, and the executive of this territory. I do not, said *Mr. G.* understand that, according to the constitution, we have a right to make him legislator, judge, and executive, in any territory belonging to the United States. Though, therefore, on this occasion I feel no jealousy of the abuse of the powers conferred on the president, yet I cannot agree to them, because I consider them repugnant to the constitution.

The argument that the powers are necessary, though unconstitutional, is no argument with me. If gentlemen can so explain the section, as to show to the satisfaction of the committee that it is competent to this house to transfer to the president all these powers, I shall have no objection to the section; but until this is done, it is my duty to vote for striking it out. And though

it is impossible for me, at this moment, to devise a plan for overcoming these difficulties, yet, I trust, if time be allowed, there will be found wisdom enough in the committee to devise one. To the first section, authorizing the taking possession of the country, so far as I can understand it, I can see no objection.

*Mr. Nicholson* was opposed to striking out the second section, as he did not perceive the evils contemplated by the gentleman from Connecticut. The question is, whether we shall take immediate possession of this country, or wait till this body shall have time to form such a government as shall be hereafter likely to render the people happy, under laws according to the provisions of the constitution. I think, said Mr. N. it will be injudicious to delay taking the possession, until such a government shall be formed. The only question then that can be started is, whether the second section of this bill violates the constitution. On this point I differ entirely from the gentleman from Connecticut. I do not see in it any violation of the constitution. The gentleman supposes that by adopting the provisions of the second section, we shall vest all the civil, military, and judicial powers of the existing government of Louisiana in the president. But it clearly is not so. We vest in him the appointment of the persons who shall exercise these powers, but we do not delegate to him the exercise of the powers themselves. Is there any difference between this and the provisions of the ordinance of 1786, which relates to territorial governments? By that ordinance, and I have never heard its constitutionality questioned, all the civil, military, and judicial powers are vested in such persons as the president may appoint. Judicial powers are vested in persons appointed by the president; so with respect to the civil and military powers; and the legislative powers are vested in a body, part of which is appointed by the president. I am, with other gentlemen, unable to say what are the nature and extent of the powers exercised by the present government of Louisiana. But we must authorize the taking possession of the country, and we must in such event authorize

the exercise of these powers, viz. the exercise of military power by an army, the judicial powers by judges, and the other necessary powers by other officers; and unless congress shall divest the president of the power of appointing these officers, it will be vested in him by the constitution. I repeat it: these powers are not delegated to the president, but to such persons as he may appoint. I know the old axiom, *qui facit per alium facit per se*; but it does not apply in this case. It is possible that these appointments may be conferred on persons in the ceded country, or the persons may be sent from the Atlantic states, or from the Mississippi territory; but be this as it may, some persons must be appointed to exercise these powers, until congress shall establish a new government.

*Dr. Mitchell* expressed his wish that the section of the bill might stand. To strike it out would be to make void all the proceedings respecting the province of Louisiana, on which congress had been engaged with so much care and diligence. We had purchased the country, and made arrangements to pay for it: and now with the consent of France possession is to be taken; when, behold! an objection is made to that part of the intended statute which confers on the president the power to occupy and hold it peaceably for the nation.

The motion to obliterate the second section of the bill, is grounded on the danger to be apprehended from an enlargement of the presidential power. And it is alleged that if the section should receive the vote of the house, all military, civil, and judicial authority would be thereby centered in the executive. It was declared to be unconstitutional in congress to delegate such vast and unlimited authority, and even if the constitution permitted it, there would be great indiscretion in the delegation of such power.

For his own part, Mr. M. said, he was strictly tenacious of the rights reserved to the people. He was equally regardful of the privileges belonging to the states. He was a zealous advocate too, of the powers secured to the national legislature by the constitution. In taking possession of the ceded country, in the manner proposed

by the bill, there was no violation of the rights of the citizens, no usurpation of the privileges of the republics, nor any infraction of the great national deed of settlement. The jealousy expressed by some gentlemen against the accumulation of excessive power in the chief executive magistrate was excited by slight circumstances. Mr. M. was totally averse to the creation of a dictator; nor did he discern any thing tyrannical or despotic lurking in the paragraph which had been spoken of in such odious terms. The mischief complained of was rather imaginary than real.

But let it be examined fairly what congress are meditating to do. The third section of the fourth article of the constitution contemplates that *territory and other property* may belong to the United States. By a treaty with France the nation has lately acquired title to a new territory, with various kinds of public property on it, or annexed to it. By the same section of the constitution, congress is clothed with the power to *dispose* of such territory and property, and to make all needful rules and regulations respecting it. This is as fair an exercise of constitutional authority, as that by which we assemble and hold our seats in this house. To the title thus obtained, we wish now to add the possession; and it is proposed, that for this important purpose, the president shall be duly empowered. There is no person in the nation to whom this can be so properly confided as to the president. Besides being the head of the executive department, he is indebted for his promotion to that exalted place to the suffrages of electors chosen from the people. And the people of the United States can have no serious or solid objection to the part of the bill now proposed to be expunged, which authorizes the man of their confidence and choice to take possession of Louisiana in their behalf.

It has been said, that all civil, military, and judicial powers are to be consolidated and confounded in the president. There is no such thing meditated, Mr. Chairman, in the bill. The president is not to officiate in either of those capacities personally in Louisiana. He is only to direct in whom the authority now existing

in the French or Spanish officers of the province shall vest, when our government shall have gained the possession of it; and in what manner that authority so transferred shall be exercised, by those to whom it shall be by him delegated. In all this, the president does not so much himself act, as he puts other persons in a condition to act. In the accomplishment of the object, the president would indeed provide for the performance of civil, judicial and military duties; but in effecting these, he would only appoint the officers, and give directions as to their *manner* of proceeding, but he would not himself be either a legislator, a judge, or a colonel of the island of New-Orleans. He was, in short, only the organ by which certain acts necessary to be done, and incidental to gaining the actual possession of the country, could be performed. And if ever the plea of adopting measures *e neccssitate* could be made, it was on such an occasion as this.

Dr. M. then drew a parallel which he hoped would be agreeable to the opposers of the bill, between the powers intended to be vested in the president of the United States, and those which according to the law and usage of England were inherent in the king. According to the true theory of the British constitution, the sovereign was the chief judiciary officer and president in his courts; he was also the head of the established church, and of course the great spiritual president of the realm; in him also were deposited the important concerns of war and peace. Yet although the writs were tested in his name, it was notorious that he now-a-days never went personally and took a seat in the bench. He did not take upon himself the performance of sacerdotal functions, nor act the part of a bishop or archdeacon. Neither did he go forth into the field of battle, and do the duties of a general or a quarter-master. Yet the king had a qualified superintendance over all these great departments of the public business, which it was not expected he should perform in person, but cause to be performed by fit persons of his appointment. So it was with the president in the present case. He was not supposed by any body to be sent into Louisiana,

to act personally in either a civil, military, or judicial character. The spirit and meaning of the bill went no further than to authorize him to employ such men as he should judge capable and worthy of those several kinds of trusts. And so far, Mr. M. said, in the present case, he was entirely willing to delegate the power by law. It would not be permanent, but *ad interim* only. There was a provision in the section against the perpetuity of this power, by the resumption of it as soon as congress should have collected information enough to establish a temporary government. And this might, in all probability, be done during the present session. Mr. M. owned, however, that he should think the bill rather more complete, if there was a limitation in it as to the amount of expence which would be necessary to carry it into effect; but as he observed a reference in it to the act passed on the third of March last, which act contained a limitation as to the sum of money which might be expended, he thought there was no need of moving an amendment for that purpose. As therefore there was nothing like a claim of prerogative on the part of the executive, but, on the other hand, a constitutional and sound deposit of powers in him by congress, Mr. M. hoped the motion to strike out would not prevail.

Mr. Gregg thought the section might be retained, and yet the inconvenience apprehended by the gentleman from Connecticut be obviated by a small amendment: to wit, by adding, after the word *manner*, "not inconsistent with the constitution of the United States." Mr. Gregg had no fears of the exercise of the powers vested in the president by this bill, or that he would not concur in relinquishing them, when congress may establish a temporary government for the territory. If the gentleman from Connecticut withdrew his motion, he would offer the amendment he had stated.

Mr. Dana said, if the amendment proposed by the gentleman from Pennsylvania were inserted, it might imply, that we might pass laws that were unconstitutional; it was therefore superfluous: it is objected to the scope of the second section that it is unconstitution-

al ; insert the amendment, and it nullifies it. The gentleman from New-York (Dr. Mitchell) has referred to a subject with which he is well conversant. He is correct in stating that the *formal* style of the English acts is in the name of the king. In the formal style of the acts of parliament, the king is legislator ; but will it be inferred from this circumstance that he is the real legislator ? The gentleman is too well acquainted with the constitution and laws of that country not to know that the king, though nominally the dispenser of justice, cannot himself sit upon the bench ; and that this has been the case since the act of settlement. He might, in support of this position, refer to the declaration of a celebrated chief justice of England, who had said that the honour of the crown had nothing to do with the courts of justice.

The gentleman is equally unfortunate in his remarks on the power of congress to make rules for the government of a territory. It is objected to this, that in this case you make no laws at all. Is it to make laws, to say a man may do as he pleases ? The proposed government is not even provisional or circumscribed. Insufficient also is any argument deducible from the ordinance establishing territorial governments. He presumed the ordinance alluded to was that of 1787. Under that ordinance the president is authorized to appoint the judges of the territory ; but, once appointed, they hold their offices during good behaviour. Who, under that ordinance, make the laws ? Neither the judges nor the president ; no laws can be accepted but such as have received the sanction of a representative body. What is proposed by the bill ? That all powers, military, civil, and judicial, exercised by the officers of the existing government, shall be vested in such persons, and shall be exercised in such manner, as the president shall direct. He may, under this authority, establish the whole code of Spanish laws, however contrary to our own ; appoint whomsoever he pleases as judges, and remove them according to his pleasure ; thus uniting in himself all the power, legislative, executive, and judicial. This, though a complete despotism, gentlemen may

perhaps say is necessary. If so, let the military power be exercised by the president as commander in chief of the armies.

Mr. Varnum observed, that it seemed to him that gentlemen who had made a constitutional difficulty respecting the provisions of this bill, and those of the treaty, had in their arguments mistaken their ground on the same point; and that they were objecting to the constitutionality of things not within the constitution. During the previous discussions, as well as on this day, he thought, that as to the retention of the free navigation of the Mississippi by Spain and France, the sovereignty of the ceded territory was not completely vested in the United States until the end of twelve years. We acquire the sovereignty over that country under certain terms; we have not at once all of it that relates to trade. There could, therefore, be no unconstitutionality in carrying the treaty into effect on the ground taken by gentlemen.

He considered the objections made to the second section of the bill under consideration of the same nature. We are told that we are about to authorize the exercise of power over the ceded territory, not authorized by the constitution. He would ask if the constitution were to take effect as soon as the United States take possession of the territory? On this point he would refer to the treaty. It provides that "the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible." How incorporated? By a legislative act? No; "according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States: and, *in the mean time*, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

In what mean time? There is a time when the country is acquired, and a time when it will be admitted into the union. Between these periods, *in the mean time*, the people are to enjoy their liberty, property, and the religion which they profess. I, said Mr. Varnum, can

devise no way of their enjoying these rights, until admitted into the union, but by their continuing under the government of the laws of Spain. The senate have made provision for carrying into effect this part of the treaty, and it cannot be carried into effect in any other way. I am therefore against striking out the section, and think the amendment unnecessary.

*Mr. Eppes* said, the only question before the committee was, whether it was important to take possession of this country or not. If a proper view be taken of the proposition of gentlemen opposed to the present measure, though they profess to be the friends of the people of that territory, it will appear in fact to disfranchise them. What will be the effect of striking out the second section of the bill? If the president take possession of the country, what will be the situation of the people? The moment he takes possession, the Spanish government ceases. By what laws then will they be governed? He had never expected from that quarter of the house such a proposition. He had expected from their uniform professions, that an attachment to order and good government was with them an universal sentiment. He hoped, therefore, before the committee concurred with them in striking out the section, some substitute for the government of these people would be offered.

*Mr. Eustis* said, it was possible the bill under consideration might in its details be objectionable, but in principle it was certainly sound. The government of the United States has a constitutional right to acquire territory, and they have consequently a right to take possession of it when acquired. The taking possession of it was not only the right, but the duty of the government. And how is this to be effected? Will any gentleman venture to propose a delay until congress shall have passed a new code of laws? Are gentlemen, at this late day, to be informed that this would be to throw away one of the most valuable acquisitions made by our country, since the adoption of the constitution, or the declaration of independence? As the gentleman, last speaking, rightly observes, the entire government of

Spain ceases on our taking possession. Are we then to abandon the people to anarchy?

As to the extent of the power vested in the executive, it arises from necessity. This is a new case altogether. There is no doubt that on many particular subordinate points respecting the secure possession of this country, difficulties may present themselves. But Mr. E. presumed and expected, that the same wisdom that acquired it, would preside over the councils of the nation to meet and overcome those difficulties. The second section of the bill contemplates the transfer to officers of the United States, of the same powers now exercised. It may be that the exercise of all these powers will not be necessary; while it is possible that others may be necessary. There may be difficulties of various kinds. He should name none. But as they arise, it will be the duty of the government to be prepared to meet them. He would, therefore, wish this act rather to increase than curtail them; and that the president should be authorized not only to continue all necessary existing powers, but to institute such other powers as may be necessary for the well-being of the territory. Till when? Until this house and the other branch of the legislature shall make the necessary laws. The powers delegated by the bill are imposed by the imperious circumstances of the case. What if forcible possession shall prove necessary, and the innocent inhabitants should be slaughtered, through a want of the powers necessary to preserve tranquility and good order; whose will under such circumstances will be the governing one? Will not the president, in such event, have all the powers now given him?

Mr. Eustis said he must confess that the objections made to the temporary government of the country arose from a quarter, which, by opposing every step taken to acquire it, greatly weakened, in his mind, the force of the arguments urged. He recollected when, during the last session, two millions of dollars were proposed to be appropriated towards the acquisition of this important object; it had been objected to on different grounds; there was then no objection to the constitu-

tionality of the acquisition. He should not, however, go into a detail of the arguments urged on that occasion. Those who were present well remembered them. Those objections were surmounted; and the territory was acquired. After the acquisition, what were the objections of gentlemen? Objections were made that were calculated to weaken our title, and to strengthen that of Spain; and it was further contended that we had no constitutional right to acquire the territory. These surmounted, what followed? We were then told that we had no right to guarantee to the people the right of citizenship, although the gentleman, who urged this difficulty, answered himself in the same 'breath by saying the constitution had not provided for such a case. That objection removed, what is the last, and present difficulty? Though called upon to take immediate possession of this territory, you are told you are not to govern it. This is the amount of the arguments of gentlemen; for if you do not govern it in this way, you can govern it in no other. Mr. E. saw no other alternative; there was no possibility of any other course. He was, therefore, happy to see nothing in the constitution that forbade pursuing it. On the contrary, it arose imperiously from the acquisition; and the same objections that were now so strenuously insisted upon, would lead to the adoption of those very measures which had been reprobated by both branches of the legislature, and by a great majority of the American people.

*Mr. Elliot* said, as he had the misfortune to differ, on this occasion, from the gentlemen with whom he generally voted, he should take the liberty of stating his objections to the section moved to be stricken out. He was persuaded there would not be imputed to him, for so doing, the least wish to embarrass the accomplishment of the important object of the secure possession of Louisiana. No: the opinions he entertained were dictated by a wish to accelerate the taking possession. He would endeavour to show that his view of the subject was that taken by the president of the United States. By the law of nations, on the acquisition of country by cession, the laws of the nation ceding continue in force, until the

laws of the nation acquiring the territory supercede them. What then is necessary to carry this treaty into effect? It is necessary to make the appropriations. This the house have already determined to do. It is necessary to enable the proper authority to take possession of the country. That is done by the first section of this bill. These measures carry the treaty into effect; and the temporary government is immediately consequential.

But it is said, if the president is authorized to take possession, and there shall be no other provision made by congress, a military government will exist, and will disturb the rights of the people as guaranteed by the treaty. No such thing: for the military power will take possession in subordination to the civil authority. To shew that the president entertained this view, it was only necessary to advert to the language of his message, at the commencement of the session. He therein says,

“With the wisdom of congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country.”

It is evident that the president considers a temporary government as one of these ulterior measures. In his subsequent message, he alludes to the same temporary government as an ulterior measure. He says, “the ulterior provisions also suggested in the same communication, for the occupation and government of the country, will call for early attention. Such information relative to its government, as time and distance have permitted me to obtain, will be ready to be laid before you within a few days.” This information we have not yet received; and it is but proper that we wait for it.

Mr. E. apprehended no danger from a military government; information will be soon communicated, and in a few days we will be enabled to establish a temporary government on the information we shall have received.

He could not reconcile the second section with the constitution of the United States; he believed that the

constitution delegated the legislative power to congress, and not to the president ; and that it not only precluded the president from exercising it, but likewise forbade our delegation of it to him. He repeated, what he had before observed, that he had full confidence in the president ; but he objected to this delegation of power on principle : he had sworn to support the constitution, and believing that, under it, congress, and congress only, had the power of legislation, he must be against delegating it to the president.

*Mr. R. Griswold* would agree to withdraw his motion for striking out the section, if he thought that the amendment suggested by the gentleman from Pennsylvania (*Mr. Gregg*) could have the effect contemplated ; but he believed it would not remove his objection, which was that the powers, stated in the section, could not be delegated in the manner proposed ; therefore to say, that when delegated they shall not be exercised, was saying nothing, or saying that they should not be delegated. The gentleman from Maryland (*Mr. Nicholson*) has not taken his ground with his usual accuracy. He has said that these powers are not transferred to the president, but to the officers appointed by him. True : but how are they to be executed ? as the president shall direct : therefore the officers are to be viewed as under subjection to the president, and the powers to be exercised as he shall direct. Virtually then they are to be exercised by the president, and are, in fact, transferred to him ; and if we cannot transfer to him the power of legislating and judging in any one territory, we cannot in this, and the act is a violation of the constitution.

There is another objection to the power reposed in the president by this section. The constitution provides that “ he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law : but the congress may, by law, vest the appointment of

such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of department." Now, by the section of the bill under consideration, power is given to the president to appoint all the officers in the province, from the governor down to the lowest officer. Gentlemen will not say that the office of governor or judge is one of the inferior offices contemplated in the constitution. They had never been so considered. In all the arrangements of appointments for the territorial governments, the sanction of the senate had been required for the governors, judges, secretaries, &c. whereas, in this instance, the president is clothed with power to appoint all the officers in the territory. He apprehended that such a power could not be constitutionally given.

Mr. Griswold said, he had no wish to retard the enactment of the necessary laws for taking possession, which ought to be immediately done; and he expected if this section were stricken out, the wisdom of congress would devise a proper provision.

A gentleman from Massschusetts (Mr. Eustis) not content with the extensive delegation of power made by this bill, is for giving to the president all power; the effect of which would be, not only to make him king, but grand inquisitor likewise.

*Mr. Eustis* explained, and said, that he was for giving all powers necessary for the welfare of the territory.

*Mr. R. Griswold.* The powers proposed to be conferred by the gentleman are without limits. It may be necessary for the welfare of the people to secure their religion: the president may be, therefore, constituted grand inquisitor. He may also be made a king, and likewise a judge, for the good of the people. I am not, said Mr. G. willing myself to give him such extensive powers. I can, however, well account for certain gentlemen urging on this occasion the old French argument of "imperious necessity." But such a pretext can never justify me in giving a vote that will violate the constitution. I can, in truth, see no such necessity, as provision can be made for admitting these people to the enjoyment of all the privileges stipulated by the treaty,

without involving a violation of the constitution. Gentlemen may criminate, as they please, the motives of those who are for restraining this extension of executive power; but I trust, whatever may be the feelings of gentlemen, that the committee will not be impressed with the same opinion entertained by them; but that if they consider this delegation of power as repugnant to the constitution, they will not agree to it, or, in other words, to the investiture of the president with absolute power over this province. If, on the other hand, they think the delegation is constitutional, they will feel no repugnance to agreeing to it; because, as I observed before, the power will be of short duration, and will not probably be abused.

As to the idea of some gentlemen, that this territory, not being a part of the United States, but a colony, and that therefore we may do as we please with it, it is not correct. If we acquire a colony by conquest or purchase, and I believe we may do both, it is not consistent with the constitution to delegate to the president even over a colony, thus acquired, all power, legislative, executive, and judicial; for this would make him the despot of the colony. Mr. G. concluded his remarks by observing that he had no jealousy of the abuse of of this power by the president; but not being, in his opinion, authorized by the constitution, he could not agree to vote for it.

*Mr. Jackson* considered the second section of the bill as repugnant to the constitution; but if this were not the case, he had other objections to it. He thought it important to take immediate possession of the country, and was deeply interested as the representative of constituents who lived on the waters connected with the Mississippi; still he did not think it proper to be premature in establishing a system of government. So far as relates to the taking possession, said Mr. J. let us then adopt immediately the necessary measures. But so far as relates to the formation of a government, let us take time for it. I would prefer an interregnum to doing any thing which should militate against the constitution, or principles that have been long respected. I

wish not to adopt the principle of the right of this house to delegate such extensive powers for even one day; for if they possess the right of delegating them for one day, they possess the co-extensive right of delegating them for ever. Let us not then delegate them at all. It is my wish to be consistent. I have always been against delegating extensive power to the executive; and I know not of any power so extensive before delegated. But gentlemen say it is incumbent on us to take immediate possession. For this the first section of the bill is amply sufficient; and I cannot see the inconvenience of postponing the other part of the bill for a few days; particularly if the ideas of the gentleman from Vermont (Mr. Elliot) are correct, that the laws of the ceding country will remain in force until superceded by those of the country that has acquired the territory. The gentleman from New-York sees no danger in giving to the president despotic power over this territory for a few days.

*Dr. Mitchell* explained, and observed that the gentleman had mistaken his remark. His object was to show, that though the power might appear to be despotic, yet that it really was not so.

*Mr. Jackson* said, he understood the gentleman as he had explained. If the power delegated carried with it such an appearance, it ought to be a sufficient reason for rejecting it.

The gentleman from Massachusetts (Mr. Varnum) has observed that we do not acquire the exclusive sovereignty of this territory till the expiration of twelve years after the ratification of the treaty. In this opinion I differ from him, for if we do not possess the exclusive sovereignty, it would be impossible for us to legislate, as the act of legislation is the highest attribute of sovereignty.

When I recur to the constitution I find, that though it does not expressly say the legislative, executive, and judicial powers shall be distinct, as some constitutions lately formed do, yet it amounts in fact to the same thing, by delegating special powers exclusively to particular departments. I believe also the president to be

inimical to the extension of executive power. I am not afraid of delegating such power, if not inconsistent with the constitution, because I have so much confidence in the president, as to be convinced that he would not abuse it. But I believe principle ought, under all circumstances, to be respected, and under present circumstances, though we may have a president so congenial to our wishes. What, if hereafter we should deem it important to oppose the delegation of such power; gentlemen then, in favour of such a delegation will say, here is a precedent set by yourselves, and thus preclude us, on the score of consistency, from opposing the measure.

I did intend to say something about the right of the United States to acquire territory; but the gentleman from Connecticut (Mr. Griswold) having acknowledged the right to acquire it, either by purchase or cession, renders all further remarks on this point unnecessary.

*Mr. Smilie* said this subject struck him differently from other gentlemen. If it appeared clear to him that the constitutional right to delegate the powers contemplated by the second section did not exist, he should vote against it. But he entertained no doubt on this point. He knew that it had been doubted whether the constitution authorized the government of the United States to acquire territory; but those doubts were this day abandoned. He agreed in opinion with the gentleman from Massachusetts (Mr. Varnum) that the constitution of the United States did not extend to this territory any farther than they were bound by the compact between the ceding power and the people. On this principle they had a right, viewing it in the light of a colony, to give it such government as the government of the United States might think proper, without thereby violating the constitution; when incorporated into the union, the inhabitants must enjoy all the rights of citizens. He would thank gentlemen to show any part of the constitution that extends either legislative, executive, or judicial power over this territory. If none such could be shown; it must rest with the discretion of the government to give it such a system as they may think best for it. At the same time, *Mr. S.* said, he

would pledge himself to be among the first to incorporate the territory in the union, and to admit the people to all the rights of citizens of the United States.

*Mr. Rodney.* When a constitutional question is made, and constitutional objections urged, by a respectable member of this house, they shall always receive from me a respectful attention. On this occasion, I shall endeavour to answer the objections, and remove the doubts entertained by some gentlemen. I believe we shall find that by adopting the second section of the bill under consideration, we shall not infringe the constitution in the remotest degree. No person is more opposed to the extreme of absolute and unlimited power, or to vesting in any man that authority, which, by not being circumscribed within known bounds, may be easily abused. No person is more opposed to the exercise by the president, of powers exercised by the Spanish inquisition, and authorized by other governments. But cases may occur, where for a moment, powers, to which, without an absolute necessity, no one would agree, become necessary to be vested in some department of the government; and I am in favour of this section for the reasons assigned by my friend from Virginia, to wit, that the exercise of the powers delegated will be confined to a short space, and will be of no further duration than shall be necessary to obtain the end of a secure possession of the territory. It is admitted by the gentleman from Connecticut (*Mr. Griswold*), and he deserves infinite honour for the admission, which shows that he has magnanimity to acknowledge an error when he discovers it, that the United States have a right to acquire territory by treaty or purchase. The other day the gentleman admitted the right to acquire territory by warlike means; to-day he goes a step further, and admits that which enables me to demonstrate that this section involves no violation of the constitution.

*Mr. Griswold* explained. He wished, once for all, to state what he had stated on a previous occasion, and what he had stated that day. He did admit that the United States might acquire territory by war or purchase; and he had always admitted this. But he had

said that they could not by treaty admit a foreign country and incorporate it into the union. If the gentleman from Delaware considers these remarks as inconsistent, he is welcome to the opinion.

*Mr. Rodney.* I thank the gentleman from Connecticut for his explanation. The observations I was about to make were on no other ground than that now stated by the gentleman. The United States, it is acknowledged, have a right to extend their territory beyond that which they possessed when the constitution was formed. If then there exist the right to acquire territory, there is a consequence of the laws that pervade all civilized nations, which will show not only the constitutionality but the propriety also of this section. It is a received principle of the law of nations, that when territory is ceded, the people who inhabit it have a right to the laws they formerly lived under, embracing the whole civil and criminal code, until they are altered or amended by the country to whom the cession is made. This is the received principle of the law of nations, and operates wherever the right to acquire territory is previously given. I will put a plain case, on the ground so commonly of late resorted to, that of acquiring territory by war. The right to make war is vested by the constitution in the government of the United States. Suppose we had gone down the Mississippi, and favoured the wishes of some of our citizens. Would not gentlemen, in that case, have acknowledged that we should have possessed the right of laying contributions? Should we not have had the right of saying to those who exercised the powers of government in that country, Begone! We will make new arrangements; the power of government shall be exercised by such particular organs as we like. Your laws and your religion shall be preserved; but your officers shall be replaced by ours. Under the laws of nations we should have enjoyed all these powers.

But independent of this power conferred by the law of nations, I am inclined to think the provisions of the constitution apply to this case. There is a wide distinction between states and territories, and the constitu-

tion appears clearly to indicate it. By examining the constitution accurately, it will be found that the provision relied upon by the gentleman from Connecticut will not avail to support his argument. It will appear that it is to operate in the case of states only. By the third section of the fourth article of the constitution it is declared, that "the congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or any particular state."

This provision does not limit or restrain the authority of congress with respect to territories, but vests them with full and complete power to exercise a sound discretion generally on the subject. Let us not be told this power, from its greatness, is liable to abuse. If arguments are drawn from the abuse against the use of power, I know no power which may not be abused, and it will follow that the same arguments that are urged against the use of this power may be urged against the use of all power. If the constitutional powers given to congress are abused by their representatives, the people may dismiss them. But on this subject, I apprehend, there is little danger of abuse by representatives coming from states. If I am correct in this construction of the constitution, it puts an end to the constitutional objections urged by gentlemen. They may oppose the present measure as inexpedient: but when we contemplate the people on whom it is to operate, we may rest satisfied that they will consider it as beneficial, inasmuch as it does not produce a violent change in their habits and laws.

We may be told, that in the government for the North West territory there are certain fixed rules established. But, by a recurrence to the ordinance for the government of that territory, and to the laws of congress subsequently made, it will be seen that congress have conceived themselves to be possessed of the right, and have actually exercised the power to alter the territory, by adding to or taking from it as they thought pro-

per, and by making rules variant from those under which it was originally organized.

In the territories of the United States, under the ordinances of congress, the governor and the judges have a right to make laws. Could this be done in a state? I presume not. It shows that congress have a power in territories, which they cannot exercise in states; and that the limitations of power, found in the constitution, are applicable to states, and not to territories.

The question was then put, on striking out the second section, and lost. Ayes 30.

The committee rose, and reported the bill without amendment.

*Mr. Randolph* moved to amend the second section, by adding to the end thereof the following words, "or maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property, and religion."

Agreed to, without a division.

The bill was ordered to be engrossed for a third reading to-morrow.

On motion of *Mr. Randolph*, resolved that so much of the president's message as relates to permanent arrangement for the government of Louisiana, be referred to a select committee.

Carried without a division.

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FRIDAY, OCTOBER 28.

The house resolved itself into a committee of the whole, *Mr. Dawson* in the chair, on the bill for carrying into effect the convention of the thirtieth of April, 1803, between the United States of America and the French republic.

*Mr. R. Griswold* proposed to amend the fifth section by introducing near the end thereof, after the word "conformity," the following words, "the provisions of

the said act, entitled an act making provision for the redemption of the whole of the public debt of the United States, and”.

Mr. Randolph and Mr. Nicholson considered the amendment as altogether useless.

After some conversation, it was lost without a division.

*Mr. Eustis* moved to substitute, in the first section, the word “Louisiana,” in the room of “New-Orleans,” making the payment of interest on the stock commence at the period when possession of Louisiana, instead of New-Orleans, shall have been obtained. Agreed to, without a division.

The committee then rose, and reported the bill with this amendment; and the house immediately took up the report and concurred therein; when the bill was ordered, without a division, to be engrossed for a third reading to-morrow.

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SATURDAY, OCTOBER 29.

An engrossed bill for carrying into effect the convention of the 30th of April, 1803, between the United States of America and the French republic, was read the third time and passed.

On motion of Mr. Randolph the title was altered, so as to read “An act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for enabling the president to carry into effect the convention of the 30th of April, 1803, between the United States and the French republic.”

















